

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own  
Motion Into Competition for Local Exchange Service

Order Instituting Investigation on the Commission's Own  
Motion Into Competition for Local Exchange Service

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Attachment  
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**PACIFIC BELL'S EMERGENCY PETITION  
TO MODIFY DECISION 96-12-086**

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## EXECUTIVE SUMMARY

Circumstances have changed dramatically since the Commission banned overlay area codes in Decision 96-12-086. Since then, shortages and rationing of NXX codes has grown increasingly severe, and the number of outstanding requests for NXX codes has skyrocketed. As of September, there were 822 outstanding requests for NXX codes in the Commission's monthly NXX code lottery. While other states have faced numbering shortages, no other state in the nation is experiencing numbering shortages that are anything like the shortages in California: this State denies hundreds of NXX code requests a month, far more than three times the number of NXX code requests denied each month by the rest of the nation combined.

The extreme shortage and extended rationing of telephone numbers in this State harms customers, carriers and competition. However, it does not harm all carriers and all customers equally: shortages and rationing are causing substantially more harm to us and our customers than to other carriers and their customers. Not only are we less likely to get codes in the lottery than Competitive Local Exchange Carriers ("CLECs"), but we are unable to meet the needs of our existing customers, causing us to lose goodwill earned from years of providing quality service. And our loyal customers, those who remain with us, are hamstrung by our inability to get them the telephone numbers they need. No customer should be forced to gamble on a lottery for the ability to expand his or her business, and no carrier should be forced to gamble for the ability to obtain a basic component necessary to provide service and to compete in the marketplace; but that is exactly the situation in California today.

The ban against overlay area codes already has been applied to all of the area code relief projects required by D.96-12-086. Under this policy, approximately 2,800 NXX codes (28 million telephone numbers) have changed, and the result has been a proliferation of area codes, increasing NXX code shortages, nearly continuous NXX code rationing, and extended disruption and inconvenience for Californian businesses and consumers. Of the ten area code splits listed in D.96-12-086, eight either already have or soon will fail to provide enough relief to end rationing in the relieved area, and eight are projected to provide insufficient relief to meet national industry standards governing length of relief. Continued splits also have increased 1+10-digit local calling and diluting the perceived geographic integrity and recognition value of area codes. The ban against overlays has proven so completely incapable of meeting demand for NXX codes, it should not be extended to prohibit overlays for relief projects that it was never intended to cover.

The overlay ban also has been applied in violation of Section 7930 of the Public Utilities Code, because it has been used to prevent the industry and the public from discussing overlays in public meetings. Overlay area codes provide a method of mitigating against the harmful effects of introducing a new area code,

and, pursuant to the Code, the Commission must afford the industry and the public a meaningful opportunity to discuss area code overlays as one method of relief.

In fact, overlay area codes are the best solution to the current numbering shortage. Overlay area codes provide more effective and efficient relief than geographic splits, because they make the full 792 assignable NXX codes in an area code available throughout the NPA, allowing NXX codes to be assigned where the demand is. Particularly in high growth, densely populated urban areas where natural geographic split lines do not exist, overlays provide a means of extending the life of new area codes. Overlays provide more effective and efficient relief without requiring that customers change their telephone numbers. And, because existing telephone numbers do not have to be reprogrammed in all service providers' switches, and customers do not have to learn the new area code for existing numbers on a "call by call" basis, overlays can be implemented quickly – providing timely and effective relief when a shortage develops. The competitive concerns that led the Commission to ban overlays (such as concern over the timing of permanent long-term number portability ("LNP") implementation) have been addressed and resolved. There simply is no good reason to maintain the overlay ban, particularly since geographic splits have proven to be so completely incapable of providing sufficient NXX codes in a timely fashion, but, instead, have exacerbated shortages, extended rationing, and caused substantial disruption for customers.

Eliminating the overlay ban is not enough, however. To solve the current numbering crisis, and to avoid future numbering shortages, the Commission should adopt a rebuttable presumption in favor of overlay area codes in specific situations: (1) where the area to be relieved already has an overlay area code or mandatory 1+10-digit dialing; (2) where the previous geographic split relief failed to provide sufficient relief to comply with industry standards for minimum length of relief; and (3) where demand for numbering resources is at a premium in the high growth, densely populated urban areas of the State. Modifying D.96-12-086 in this manner would create a solution to the current numbering crisis, one that would end the perpetual rationing of telephone numbers in this State and ensure sufficient numbering resources for all carriers and customers, now and in the future.



## **PACIFIC BELL'S EMERGENCY PETITION TO MODIFY DECISION 96-12-086**

Pursuant to Rule 47 of the Commission's Rules of Practice and Procedure, Pacific Bell (U-1001-C) respectfully petitions the Commission to immediately modify Decision 96-12-086 to (1) eliminate the Commission's prohibition against implementing overlay area codes in this State before the year 2001 and (2) establish a rebuttable presumption in favor of overlays in certain circumstances for future area code relief projects.<sup>1</sup>

### **BACKGROUND**

#### **The Commission Adopts The Overlay Ban.**

In Decision 96-12-086, the Commission adopted a statewide policy for area code relief that prohibited the implementation of overlay area codes for the "next round of relief projects" in the State.<sup>2</sup> Page 23 of the Decision listed the specific area codes covered by the ban against overlay area codes by reproducing a copy of the industry's then-projected California and Nevada area code relief project planning schedule. The schedule listed 11 area code relief projects that would be implemented in the State of California through the year 2000.<sup>3</sup>

The overlay ban was established after contentious proceedings regarding the method of relief for a few specific area codes.<sup>4</sup> Based principally on concerns about the effect that overlay area codes might have on competition, the Commission in D.96-08-028 required that permanent Local Number Portability ("LNP") be implemented prior to implementation of overlay area codes and it required (consistent with the FCC's later ruling) that mandatory 1+10-digit dialing also be implemented in any overlay area. The Commission also initiated a further investigation into customer preferences regarding area code relief methods, which led to

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<sup>1</sup> As discussed in the "Procedural Background" section below, Pacific Bell separately, and in the alternative, requests the same relief by motion pursuant to Rule 45 of the Commission's Rules of Practice and Procedure.

<sup>2</sup> D.96-12-086, at Ordering Paragraph No. 1.

<sup>3</sup> The planning schedule listed 12 area code relief projects. The twelfth relief project – relief of the 702 NPA in the year 2000 – was for the State of Nevada. See D.96-12-086, at 23. Of the 11 California relief projects, geographic splits were adopted as the method of relief for 10; an overlay was adopted as the method of relief for the final project, the subsequent relief of the 310 NPA. See D.98-05-021

<sup>4</sup> The Commission first addressed issues associated with overlay area codes in Decision 95-08-052, in which it rejected an overlay for the 310 area code in favor of a geographic split of the 310 NPA into the 310 and 562 area codes.

Decision 96-12-086. In the proceedings leading up to D.96-12-086, the parties presented briefs on issues associated with overlay area codes, including briefing regarding the importance of customer preference surveys introduced by Pacific, GTE California Incorporated, and the CLC Coalition.<sup>5</sup> There were no hearings held; all parties agreed that "evidentiary hearings were not necessary to set a statewide area code policy."<sup>6</sup>

The overlay ban established in D.96-12-086 was based on three principal factors. First, the Commission cited requirements for competitive neutrality set forth in D.96-08-028, including the requirement that LNP and mandatory 1+10-digit dialing be implemented in any area with an overlay area code, and the FCC's requirement that sufficient NXX codes be set aside in the exhausting area code to ensure a "first" NXX code for requesting new entrants.<sup>7</sup> Second, the Commission stated it wanted to minimize the "negative consumer impacts" of introducing a number of new area codes, and based primarily on the surveys, it concluded that customers preferred to maintain 7-digit dialing as long as possible.<sup>8</sup> Finally, the Commission expressed concern that overlay area codes posed "potential risks of delays" because there was "still some uncertainty about whether unforeseen problems and learning curve constraints associated with an initial overlay might lead to delays" in area code relief.<sup>9</sup>

Although the Commission banned overlays for the area code relief projects listed on page 23 of D.96-12-086, it acknowledged overlays would be preferable to geographic splits in some situations. The Commission found that "[a]s NPAs continue to shrink, it will become increasingly difficult to draw satisfactory boundaries for subsequent splits" and that "[a]s splits become progressively smaller and more contentious, the consumer preference for splits in these very small NPAs can be expected to diminish."<sup>10</sup> The Commission also acknowledged that overlays could better optimize the life of area codes, "depend[ing] upon how well balanced the proposed split is designed."<sup>11</sup> The Commission therefore proposed revisiting its policy for area code relief projects "in small, densely populated NPAs after the year 2000," and it explicitly

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<sup>5</sup> See D.96-12-086, at 3-4, 7.

<sup>6</sup> See D.96-12-086, at 4. See also *id.*, at 7 (detailing the bases for the Decision).

<sup>7</sup> See 47 C.F.R. § 52.19(c)(3)(iii).

<sup>8</sup> D.96-12-086, at 7.

<sup>9</sup> D.96-12-086, at 29.

<sup>10</sup> D.96-12-086, Finding of Fact Nos. 38 and 39.

<sup>11</sup> D.96-12-086, at 25.

exempted the final area relief project on the industry's planning list, subsequent relief of the 310 NPA.<sup>12</sup>

**The Commission Adopts All Of The Relief Projects Listed In Decision 96-12-086 – And More.**

After the Commission prohibited overlay area codes, the industry and the Commission went to work on implementing the 11 new area codes listed on page 23 of Decision 96-12-086. In accordance with the Commission's ban against overlay area codes, all but one of these relief projects were adopted as geographic splits. All of these projects either have been, or are being, implemented by the industry. The specific relief projects are summarized below, in the order listed in the chart on page 23 of D.96-12-086:

- **310/562 Geographic Split (Los Angeles).** The Commission adopted the 310/562 geographic split in D.95-08-052. Before the split was implemented, however, the high demand for NXX codes caused the Commission to freeze code assignments for the NPA (in June of 1996), and the 310 NPA was one of the initial area codes in the Commission's monthly NXX code lottery.<sup>13</sup> When implementation of the geographic split was completed in January 1997, the split failed to provide enough relief to end rationing of the 310 area code, requiring another round of area code relief for the 310 NPA (discussed below). For the past 27 months, the 310 area code has been in continuous rationing, and it is certain not to get out of lottery until the next round of relief is implemented (the 424 overlay area code, to be implemented in July 1999). The other side of the split - the 562 NPA - has less than 420 NXX codes left, and it is being watched closely by the North American Numbering Plan Administrator (NANPA) with the expectation that further relief will soon be required for that "new" area code (introduced less than 2 years ago).
- **415/650 Geographic Split (San Francisco Bay Area).** The Commission adopted the 415/650 geographic split plan in D.96-08-042. However, the 415 area code was running out of NXX codes so quickly that the code administrator had to freeze NXX code assignments in the 415 NPA even before the Commission adopted the relief plan or the lottery rationing process. As a result, the 415 was one of the area codes in the Commission's first monthly NXX code lottery. The geographic split was completed in May of 1998, but the relief was insufficient to end rationing in the 415 area code, which stayed in the lottery through the split. For the past 2 years, NXX codes in the 415 area code have been rationed, and shortages will continue at least until the next round of area code relief (the industry is currently completing

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<sup>12</sup> See D.96-12-086, at 25-26 and Ordering Paragraph No. 1. The Commission initially required that proponents of an overlay area code prove that the overlay would last more than three years longer than the average of the two NPAs that would result from a split, but it later modified D.96-12-086 to eliminate that requirement. See D.97-08-065, at Ordering Paragraph Nos. 3 & 4.

<sup>13</sup> See D.96-06-062 (establishing criteria for freeze on NXX code assignments and freezing assignments for the 310 NPA pending development of rationing measures); D.96-09-087 (establish monthly NXX code lottery).

the relief plan for the next phase of relief of the 415 area code). The other side of the split – the 650 NPA – lasted only four months before it was declared in jeopardy and started rationing – very likely the shortest life of any area code in the history of the North American Numbering Plan. The industry already has held public meetings for relief of the 650 NPA.

- 916/530 Geographic Split (Sacramento). The Commission adopted the 916/530 geographic split in D.96-08-042, which was completed in July of 1998. Both sides of the split exited the lottery after the split, the only area code relief project listed in D.96-12-086 that, upon implementation, successfully ended rationing throughout the relieved area.
- 619/760 Geographic Split (San Diego). The Commission adopted the 619/760 geographic split plan in D.96-09-087. Rationing of NXX codes in the 619 area code started before that relief plan was adopted and before the Commission established the lottery; as a result, the 619 area code was one of the codes in the first monthly NXX code lottery. By the time the geographic split was implemented, however, it did not provide enough relief to get the 619 NPA out of lottery.<sup>14</sup> As a result, the 619 area code has been in continuous rationing for more than 2 years, and it very likely will continue in rationing until (at least) the completion of both phases of subsequent relief in March of 2001. In the meantime, the 760 will need further relief soon, and the industry already is planning the next round of relief for that area.
- 818/626 Geographic Split (Los Angeles/The San Fernando Valley). The Commission adopted the 818/626 geographic split in D.96-11-061. Before that plan was implemented, however, the 818 NPA entered in the lottery (in April, 1997). Although the 816/626 split was completed in August of 1998, the geographic split failed to provide enough relief to get the 818 NPA out of lottery. The 818 NPA already has been in rationing for 17 months, and the industry is currently planning for subsequent relief of that area code. On the other side of the split, code assignments in the 626 area code are exceeding projections, and industry planning for further relief of this “new” area code will probably need to begin in 1999.
- 714/949 Geographic Split (Orange County). The Commission adopted the 714/959 geographic split plan in D.97-02-016, three months after the NPA entered the lottery (in December of 1996). Although the 714/949 geographic split will be completed in January of 1999, it appears certain that the 714 area code will not escape the lottery at that time. Instead it appears that the 714 area code will not have enough NXX codes available after the split to end rationing until the next round of relief is implemented (the industry currently is developing a relief plan for subsequent relief of the 714 area code). The 714 NPA has been in lottery for 21 months, and counting.
- 213/323 Geographic Split (Los Angeles). The Commission adopted the 213/323 geographic split in D.97-02-017, and only two months later, the 213

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<sup>14</sup> In fact, in June the Commission adopted a subsequent three-way geographic split of the 619 NPA, resulting in a four-way geographic split of the original 619 NPA. See D.98-06-018 (619/858/935 geographic split decision).

area code entered the lottery (in April, 1997). The geographic split will be completed in April of 1999, and, based on existing pent-up demand, it appears probable that the 213 NPA will not last long enough to avoid rationing before the next round of relief. The 213 NPA already has been in rationing for 17 straight months. On the other side of the split, the 323 NPA is currently projected to last only 4.8 years, and very well may face a shortage condition before the next round of relief.

- 408/831 Geographic Split (San Jose/Silicon Valley). The Commission approved the 408/831 geographic split in D.97-02-017, and two months later the 408 NPA entered the lottery (in April of 1997). The split will be completed in May of 1999, and, unless the Commission adopts an overlay for subsequent relief, it appears likely (based on projected and pent-up demand) that the 408 area code will continue in lottery until May of 2001, when an overlay is implemented in the area.<sup>15</sup> The industry already has proposed to the Commission a plan for subsequent relief of the 408, and the Assigned ALJ has requested comments on whether the Commission should modify D.96-12-086 to allow a single, NPA-wide overlay for the 408 NPA in the subsequent round of relief.<sup>16</sup> Unless the Commission adopts a single, NPA-wide overlay, the 408 area code (which already has been in constant rationing for 17 months) appears likely to be facing shortages for the next 2 ½ years.
- 510/925 Geographic Split (San Francisco East Bay Area). The Commission approved the 510/925 geographic split in D.97-02-017, and three months later the 510 NPA entered the lottery (in May of 1997). The geographic split will be completed in January of 1999, and it appears that at least one side of the split, or both sides, will face shortages before the next round of relief. Although NANPA has not yet announced whether it will declare the 510 NPA in jeopardy and invoke extraordinary exhaust measures when the split is completed, the pent-up demand for NXX codes suggests that even if the 510 NPA has sufficient codes to exit the lottery for a month or two, it is likely that rationing will be necessary before the next relief plan is implemented (the industry currently is developing a plan for subsequent relief of the 510 NPA). The other side of the split - the 925 NPA - is being carefully watched by NANPA, and the industry will soon need to start planning for relief of that "new" area code. The 510 NPA has been in rationing for 16 straight months, and, unless an overlay is implemented in the next round of relief, rationing may continue in the area for several years.
- 209/559 Geographic Split (Central Valley). The Commission approved the 209/559 geographic split in D.97-09-051, which will be completed in August of 1999. This split is likely to be successful in ending rationing for both area codes, and, if it does so, it will be the only relief plan listed on page 23 of D.96-12-086 other than the 916/530 geographic split to successfully end

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<sup>15</sup> See Comments Of Pacific Bell (U 1001 C) And GTE California Incorporated (U 1002 C) Regarding Limited Modification Of D.96-12-086 And Effects Of A Single Overlay For The Entire 408 NPA, at 2-3.

<sup>16</sup> See September 25, 1998 ALJ Ruling Soliciting Comments Regarding Limited Modification Of D.96-12-086 And Effects Of A Single Overlay For The Entire 408 NPA.

rationing throughout the relieved area. The 209 NPA already has been in lottery 17 months (since April, 1997), and rationing almost certainly will continue until relief is completed in August of 1999.

The final relief plan listed on page 23 of Decision 96-12-086 was the subsequent relief of the 310 NPA. On May 7, 1998 (D.98-05-021), the Commission adopted an overlay area code for subsequent relief of the 310 NPA (the 424 area code), the first overlay area code in California. In adopting the overlay, the Commission clarified that overlays can be implemented without the delay associated with reprogramming existing numbers and providing 9-12 months of permissive and mandatory dialing periods required for a geographic split. The Commission instead required a three-month mandatory 1+10-digit dialing period and a one-year customer education program. The Commission also established policies to satisfy the FCC's "one code per carrier" requirement. After the Commission adopted Decision 98-05-021, the industry established a task force to create and implement the customer education program and began moving forward with implementation of the 310/424 overlay. The overlay will be implemented on July, 17, 1999, in accordance with the schedule adopted by the Commission.

These 11 new area codes – the 10 geographic splits and the 310/424 overlay – have not been enough, however, to meet the explosive demand for NXX codes. As a result, the Commission already has approved two additional area code relief projects that were not listed in D.96-12-086 – the 805 geographic split (805/661), and the three way split of the 619 NPA (619/858/935) – and many more area code relief projects will be required in the future, as discussed below.<sup>17</sup>

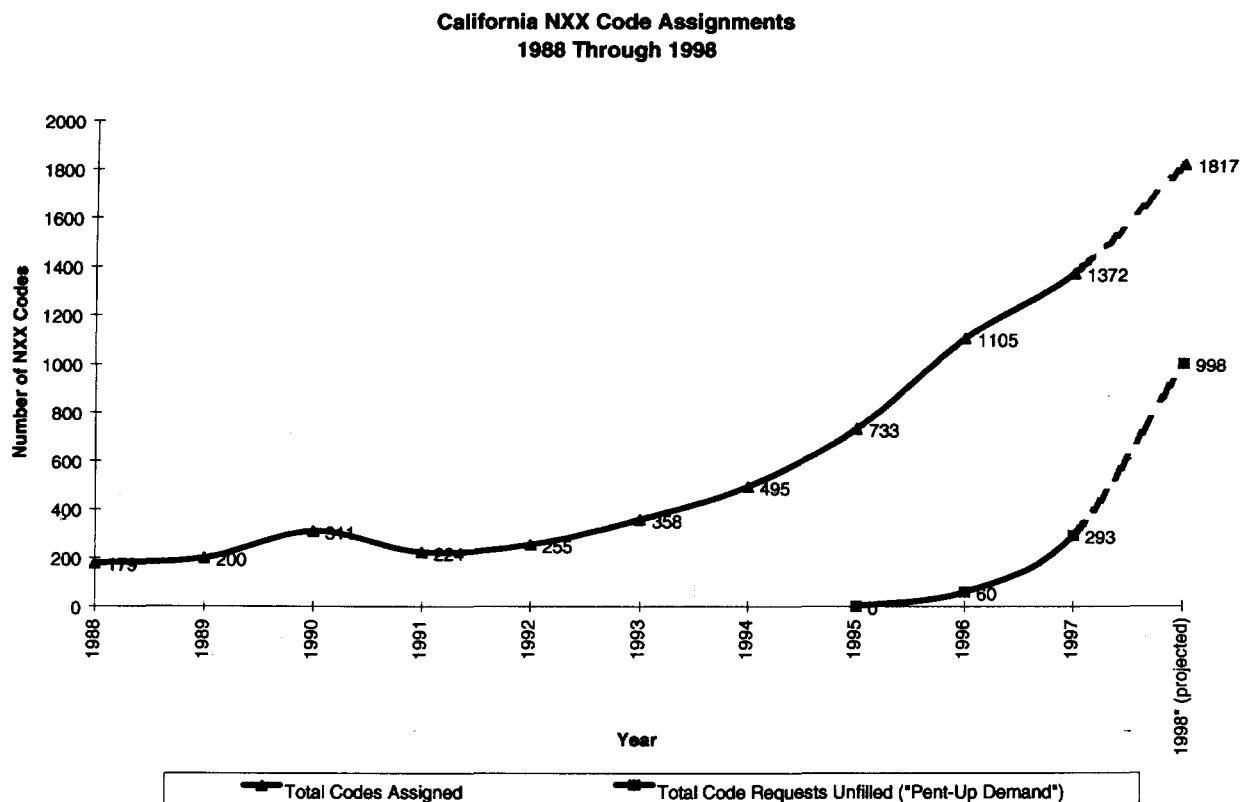
#### **The Growth In Demand For Numbers Skyrockets –**

As the industry planning committees were implementing the policy announced in Decision 96-12-086, the demand for telephone numbers in the State skyrocketed far beyond the projections of the industry or the expectations of the Commission. In 1995, the year before Decision 96-12-086, carriers had been assigned a then record number of NXX codes – 733 – which was a huge increase (238 codes, or 48%) over the 495 NXX codes assigned in 1994. That number continued to rise through 1996 and 1997. By the end of the first eight months of 1998, 1,211 NXX codes had been assigned in California, an annual pace of 1,817 NXX code

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<sup>17</sup> D.97-11-080 (approving the 805/661 geographic split); D.98-06-018 (approving the 619/858/935 geographic split).

assignments.<sup>18</sup> The number of annual NXX code assignments has more than tripled since 1994, as depicted on the top line on the graph below:<sup>19</sup>



**And The "Lines" Of Carriers Waiting For NXX Codes Grow Longer And Longer.**

The number of assigned NXX codes tell only part of the story, however. Due to the extended shortages and rationing throughout the State, carriers cannot get the NXX codes they need, but, instead, in most areas, carriers have to wait in line for months at the Commission's monthly NXX code lottery before they are assigned a NXX code.

The Commission started rationing in NXX codes in June, 1996, when it established a freeze on code assignments in the 310 NPA.<sup>20</sup> In Decision 96-09-087, the Commission established a monthly lottery to ration NXX codes in areas where demand was so great that the areas would run out of NXX codes before relief could be implemented. The

<sup>18</sup> 1,211 codes were assigned between January and August, 1998. See September 1, 1998 NANPA CO Code Administration, 1998 Code Assignments Report. Assuming the same rate of assignments through the rest of the year yields 1,817 ((1211/8)\*12=1,816.5).

<sup>19</sup> Source: California-Nevada Code Administration (CNCA) and NANPA Annual NXX Assignment Reports for 1988-98 and the monthly NXX code lottery reports filed with the Commission by code administration.

<sup>20</sup> See D.96-06-062.

Commission established a monthly lottery to ration NXX codes in areas where demand was so great that the areas would run out of NXX codes before relief could be implemented. The Commission's lottery plan allocates the available codes each month into two categories: codes dedicated to "initial" code requests (requests for an initial code in a rate center) and "growth" code requests (requests for codes in rate centers where the requesting company already has at least one code). 60 percent of the available NXX codes are assigned each month to the "initial" category, and 40 percent are assigned to the "growth" category.<sup>21</sup> In the lottery, the Commission holds a random drawing for NXX codes, using letters instead of carriers' names. If a carrier fails to receive a requested NXX code, its request goes into a "priority list" line with other denied requests, and the carrier cannot receive a code until all others before it in line are assigned NXX codes. In the meantime, the carrier waits in line, without even a random chance to receive a NXX code, until all earlier requests are fulfilled. The line can sometimes last through months of rationed code assignments.

Since rationing of NXX code requests began in October, 1996, the "lines" of carriers waiting for NXX codes have been growing – slowly at first, and, most recently, at an alarming pace. In December of 1996, after only a few months of the lottery, 60 NXX code requests were unfilled and outstanding. One year later, in December of 1997, this "pent-up demand" for NXX codes had risen to 293 outstanding requests. This year, the number has jumped dramatically: after the September NXX code lottery, 822 NXX code requests were unfilled and outstanding. The number of outstanding NXX code requests increased by 529 during this period, representing a 180 percent increase in pent-up demand in just nine months. Assuming that pent-up demand continues at the same rate, there will be pent-up demand of nearly 1,000 NXX codes by the end of the year.<sup>22</sup> This "pent-up" demand is depicted by the second line on the graph on the previous page, and the actual lottery results from each monthly NXX code lottery is shown on the graph below.<sup>23</sup>

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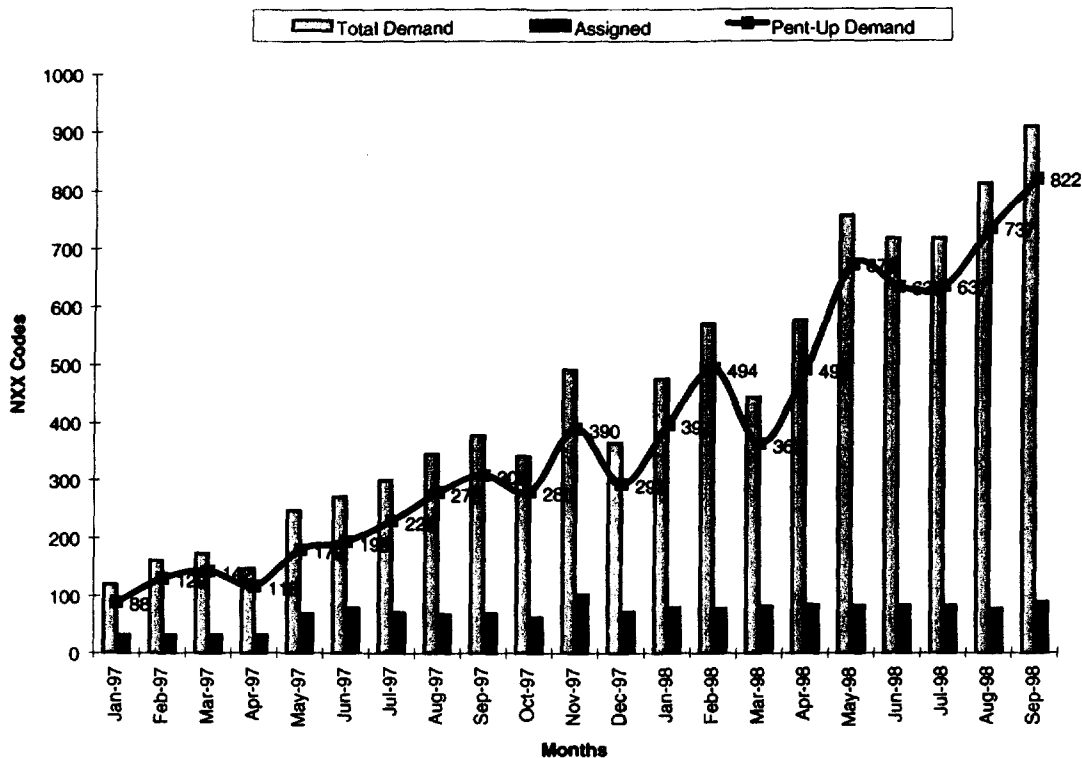
<sup>21</sup> Almost all of Pacific Bell's NXX code requests in the lottery are in the "growth" category, where only 40 percent of the codes are allocated. Thus, Pacific is automatically disadvantaged over carriers requesting "initial" codes in the lottery. See Declaration of Ross Ireland, at ¶ 5 ("Ireland Decl.") (Attachment A); Declaration of Bill F. Powers, at 3 ("Powers Decl.") (Attachment B).

<sup>22</sup> 822 NXX code requests were outstanding after the September lottery. Assuming the same rate of growth, the total number of outstanding code requests would be 997  $((293 + ((529/9) * 12)) = 998.3)$ . This is depicted graphically by the second line on the graph on the previous page.

<sup>23</sup> Source: CNCA/NANPA Monthly NXX Code Lottery Reports No. 1-25.



### CALIFORNIA NXX CODE LOTTERY RESULTS



As the “lines” waiting for codes get longer, the odds of a carrier “winning” a code in the lottery diminishes (of course, the actual odds depend on whether a carrier requests an “initial” or “growth” code). In August and September the percentage of code requests that did not “win” a code (and therefore went back into the “line” for next month’s drawing) exceeded 90 percent, for the first time in the history of the Commission’s monthly code lottery.<sup>24</sup>

#### **The Demand For Codes Continues Unabated –**

There is no sign that the demand for NXX codes is abating – in fact, all of the evidence suggests that demand continues to increase. The rapid increase in the past nine months alone in “pent-up” demand for NXX codes demonstrates that there is substantially greater demand for codes than either the Commission or the industry expected when the Commission banned overlay area codes in D.96-12-086.

Each year, the code administrator attempts to collect information from carriers regarding the number of NXX codes that carriers project they will need over the upcoming five-

<sup>24</sup> 90.54 percent (733/814) of NXX code requests in the August lottery were unfilled and outstanding; 90.23 percent (822/911) of the NXX code requests in the September lottery were unfilled and outstanding.

year period in the Central Office Code Utilization Survey ("COCUS"). These projections are voluntarily provided by carriers, and in previous years the information provided failed to reflect the actual growth in NXX code requests. However, in 1998, a larger number of carriers participated in the COCUS process, and their estimates of the demand over the next five years far exceeded anything that the industry has experienced to date.

The 1998 COCUS showed an incredible, and sustained, increase in demand for NXX codes: it estimated over 4,000 NXX code requests in 1998, 3,659 in 1999, and 3,670 in 2000. In comparison, less than 1,400 NXX codes were assigned in California in 1997, and slightly over 1,800 NXX codes are projected to be assigned by the end 1998. Concerned that COCUS overestimated actual demand, the industry agreed to revise the COCUS at its annual COCUS meeting in February 1998. However, even as revised by the industry, the 1998 COCUS shows a continuing demand of more than 2,000 NXX's each year through 2002, the end of the five-year projection cycle – a dramatic, and sustained, increase in the demand for NXX codes.

Code assignments in the area codes that are not rationed also suggest that demand is continuing to increase. Currently, NXX codes in 16 of the 22 area codes in the State are rationed in the Commission's monthly NXX code lottery, leaving only six area codes in the State where NXX codes are not rationed. The demand for NXX codes in these six area codes is extremely strong: the number of codes assigned in these six area codes is running significantly ahead of the 1998 industry-revised COCUS. In fact, in every single area code, the number of assignments is higher than projected, and the total is almost 50% higher than projected, suggesting that demand continues to be strong for NXX codes, and may in fact be even stronger than the industry-revised 1998 COCUS suggests:

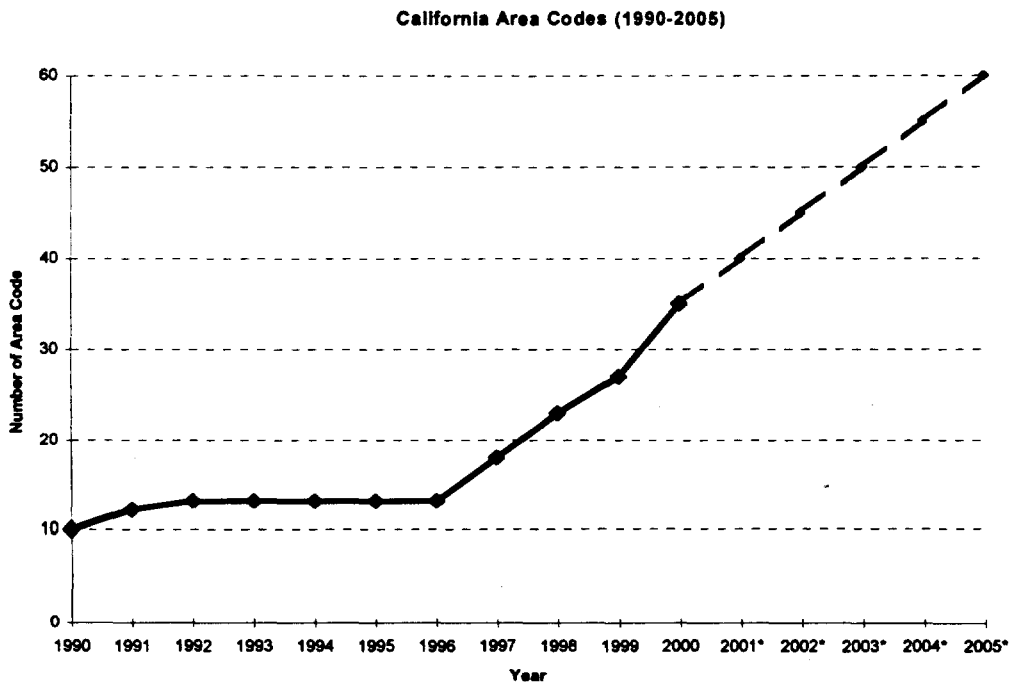
<u>Area Code</u>	<u>98 COCUS</u>	<u>Assignments</u>	<u>Percent Increase</u>
530	35	77	+120%
707	39	83	+113%
626	47	80	+ 70%
916	35	42	+ 20%
562	69	80	+ 16%
760	80	89	+ 11%
<b>TOTALS:</b>	<b><u>305</u></b>	<b><u>451</u></b>	<b><u>+ 48%<sup>25</sup></u></b>

<sup>25</sup> Source: California-Nevada Code Administration Revised 1998 COCUS and NANPA 1998 NXX Code Assignment Report (September 1, 1998 version). The 98 COCUS numbers represent two-thirds of the projected total for 1998, since the assignments are through August.

While some of the higher than projected demand may be caused by the rationing of NXX codes in nearby area codes (driving carriers to secure an available code in an adjacent area), the accelerated demand in these area codes will hasten the exhaust of these area codes and further exacerbate the shortage of telephone numbers throughout the State.

**And Many More Area Code Relief Projects Will Be Necessary In The Near Future.**

Californians have suffered through rapid and repeated introduction of new area codes, even as the shortage of telephone numbers has grown increasingly severe. Since the Commission established the NXX code lottery in October of 1996, the number of California area codes increased 70% (from 13 to 22 area codes). By the end of the year 2000, counting only those relief projects already adopted by the Commission or currently in planning by the industry, there will be at least 35 area codes in the State. This means the number of area codes in the State will nearly triple between 1996 and 2000. And if the number of area codes added each year continues at the same rate as in the period from 1996 to 2000 (approximately 5 new area codes a year), there will be 60 area codes in California by the end of 2005, as depicted on the graph below.



Five new area codes a year between 2001 and 2005 may be a conservative estimate, however – five area codes have not been enough to keep up with demand the past few

years, and the industry currently projects no less than seven new area codes will be implemented in California in the year 2000. As a result, the industry currently is planning relief for many area codes and even more area codes will need to begin relief planning soon. Subsequent relief of the 408 NPA is pending before the Commission. Seven more NPAs are in some stage of industry relief planning, and many of these projects will soon be presented to the Commission.<sup>26</sup> Other relief projects will propose a second, or further, round of relief for area codes that were listed in D.96-12-086, such as the 415 NPA in San Francisco, the 714 NPA in Anaheim/Riverside, the 510 NPA in the San Francisco East Bay, and the 818 NPA in the Los Angeles/Valley area. And even worse, some of these relief projects are for relief of "new" area codes created by geographic splits listed in D.96-12-086, areas where customers recently were forced to change their telephone numbers, such as the 650 area code on the San Francisco Peninsula (split from the 415 area code in March, 1998) and the 760 area code in San Diego County (split from the 619 area code in March, 1997). Based on current demand and industry projections, relief projects for other "new" area codes will quickly follow suit, including the 562 area code (split from the 310 area code in Los Angeles in August, 1997) and the 925 area code (split from the 510 area code in the East San Francisco Bay Area in September, 1998). Unless overlays are adopted for these relief codes, the Commission will be in the unenviable position of requiring that some customers change their telephone numbers twice within just a few years.

Even more area code relief projects will need to begin planning soon. At the September Statewide Industry Planning Meeting, NANPA suggested four area codes that will need to start relief planning by the end of the year, including the 562 and 925 area codes listed above, the 213 area code (in Los Angeles; recently relieved with the 323 split) and the 805 area code (in Los Angeles; to be relieved with the 661 split in 1999). In addition, the rapid rate of exhaust in three other area codes suggests that they also might have to enter relief planning soon: the 323 area code (Los Angeles, recently split from the 213 area code); the 707 area code (Northern California); and the 626 area code (Los Angeles, recently split from the 818).

In total, 15 more area codes are currently in relief planning or are likely to enter planning soon. Many of these area code relief projects will require that the Commission adopt subsequent relief in a geographic area that recently was subject to one geographic split, and

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<sup>26</sup> For example, the industry is putting the final touches on a relief plan for the 909 NPA. At the time D.96-12-086 was adopted, the 909 area code was considered a "safe" area code with little demand.

several of these projects will require that the Commission impose further relief in areas where customers only recently suffered through changing their telephone numbers.

**The FCC Adopts Its September 28, 1998 Pennsylvania Order.**

On September 28, 1998, the Federal Communications Commission addressed issues associated with its delegation of authority to state commissions to perform area code relief and clarified the role of state commissions in addressing numbering shortages through rationing and number conservation. The FCC explicitly clarified that its delegation of authority to state commissions to resolve area code relief issues did not extend to rationing of NXX codes or to number conservation efforts.<sup>27</sup> Instead, the FCC found that code conservation measures, including the NXX code rationing like the Commission's monthly NXX code lottery, are "outside the scope of [the state commission's] delegated authority."<sup>28</sup> The FCC modified 47 CFR 52.19(a) to permit the Commission to adopt rationing for an area code only after it has adopted the method and implementation date for relief of that area code and only where the industry is unable to reach consensus on a rationing plan.<sup>29</sup> The FCC also made it clear that conservation measures were not to be used as substitutes for area code relief. It emphasized that "[c]onservation methods are not, however, area code relief and it is important that state commissions recognize that distinction and implement area code relief when it is necessary."<sup>30</sup> The FCC emphasized that state commissions are required, under the authority delegated from the FCC, to get area code relief in place and to avoid shortages and rationing.

The *Pennsylvania Order* may fundamentally affect rationing of area codes in this State – however, the extreme shortages and pent-up demand for NXX codes will continue until the Commission adopts an area code relief policy that ensures an adequate supply of NXX codes to meet demand. It is absolutely essential, regardless whether rationing occurs on a first-come, first-serve basis, or whether it occurs through some type of rationing plan, for the Commission to act now to revise its area code relief policy to end shortages and rationing of NXX codes in this State.

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<sup>27</sup> The FCC was given plenary authority over all numbering issues in the Telecommunications Act of 1996. See 47 U.S.C. § 251(e)(1). The Commission delegated to state commissions authority only to resolve issues associated with "implementation of new area codes." See 47 C.F.R. 52.19.

<sup>28</sup> *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, NSD File No. L-97-42, FCC 98-224, ¶ 23 (FCC Sept. 28, 1998) (*Pennsylvania Order*).

<sup>29</sup> *Id.*, Appendix B.

## **PROCEDURAL BACKGROUND**

**Rule 47(d) Requirements.** Under Rule 47(d) of the Commission's Rules of Practice and Procedure, a petition for modification filed more than one year after the decision it seeks to modify must "explain why the petition could not have been presented within one year of the effective date of the decision." Decision 96-12-086 was adopted in December of 1996. There are two reasons why this petition could not have been presented by December 1997.

The first, and most important, the shortage of telephone numbers has grown drastically worse in the past year, as explained in the Background section, above. The explosion in demand for NXX codes shown in the 1998 COCUS and in 1998 NXX code assignments, the dramatic rise in "pent-up" demand during the past nine months, and the unforeseen exhaustion and initiation of rationing in the 650 NPA only four months after that area code was implemented, all occurred after December 1997. These developments vividly demonstrate the need for immediate adoption of a statewide area code relief policy endorsing overlay area codes.

Second, it was not clear until the Commission's June, 1998, decision regarding subsequent relief for the 619 NPA that the Commission would attempt to extend the ban on overlay area codes to area code relief projects not listed in D.96-12-086. In their comments regarding the 619 area code relief plan in May of this year, the Overlay Coalition explained that the ban was not intended to apply to subsequent relief of the 619 NPA, and it argued that the Commission should not extend the ban to area code relief projects not listed on page 23 of D.96-12-086.<sup>30</sup> The Commission did not address this issue when it issued its opinion (D.98-06-018), but it did use the findings of D.96-12-086 as a justification for denying an overlay area code. Because it was impossible to determine by December of 1997 that the Commission would extend the overlay ban to area codes not listed in D.96-12-086, this motion could not have been made until after the Commission's June, 1998 decision.

**Rule 47(b) Requirements.** Rule 47(b) of the Commission's Rules of Practice and Procedure requires that "allegations of new or changed facts ... be supported by an appropriate declaration or affidavit." Accordingly, Attachment A is the Declaration of Ross Ireland, Vice President, Network Planning & Engineering, Pacific Bell, and Attachment B is the Declaration

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<sup>30</sup> *Id.*, at ¶ 22.

<sup>31</sup> See May 27, 1998 Comments of the Overlay Coalition in Response to the ALJ's May 14, 1998 Ruling Soliciting Comments on 619 Area Code Relief Issues, at 2-4.

of Bill F. Powers, Sales Vice President, Priority Markets, Pacific Bell, which support the allegations of new and changed facts on which this Petition relies.

Rule 47(b) requires that a Petition for Modification "must propose specific wording to carry out all requested modifications to the Decision." The specific wording changes we propose to D.96-12-086 are set forth in Attachment C to this Petition.

Alternative Emergency Motion. While this filing is styled as a Petition for Modification, the Commission may choose to treat some or all of this filing as a motion rather than a petition to modify. Accordingly, Pacific Bell, in addition to its petition and in the alternative, respectfully moves the Commission pursuant to Rule 45 of the Commission's Rules of Practice and Procedure to grant the same relief set forth in this filing on an emergency basis.

## **ARGUMENT**

### **I. THE COMMISSION SHOULD MODIFY D.96-12-086 TO ELIMINATE THE BAN AGAINST OVERLAY AREA CODES**

#### **A. THE SHORTAGE AND RATIONING OF NXX CODES IS CAUSING SUBSTANTIAL HARM TO CUSTOMERS, CARRIERS, AND COMPETITION**

##### **1. *The Shortage Of Numbers In California Has Reached A Crisis Level.***

California has been rationing NXX codes since mid-1996, and the continued rationing has caused a build up of unsatisfied demand and an acute shortage of telephone numbers. Today, NXX codes in 16 of the 22 area codes (73%) in the State are in rationing through the Commission's monthly NXX code lottery, including the major area codes in the largest metropolitan centers in the State (Los Angeles, the San Francisco Bay Area, Orange County, and San Diego).<sup>32</sup> Rationing has been at an extremely high level for more than 16 months; since May of 1997, the NXX codes in at least 70% of the area codes statewide have been rationed. In fact, for 10 of the past 16 months, the NXX codes in 80% or more of the area codes have been in rationing.<sup>33</sup> No fewer than 12 area codes have been in rationing every single month

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<sup>32</sup> The most recent NXX Code Lottery Report filed by NANPA (Report 25) shows 18 area codes in lottery; however, the report shows two area codes (559 and 661) that have not yet entered permissive dialing and therefore technically have not yet been "opened." When these codes are opened, however, they likely will be in rationing until at least the end of the mandatory dialing period.

<sup>33</sup> The percentage only recently fell – 88 percent of the area codes in the State were in the Commission's monthly NXX code lottery from June through August of 1997.

since May of 1997 – just two months ago, the lottery hit a new record with 18 area codes in rationing.

As a result of continued rationing, available NXX codes have fallen way behind demand – and the gap between supply and demand is rapidly increasing. The number of unfilled requests, or “pent-up demand,” for NXX codes has exploded in the past nine months. After the September 1998 lottery, there were 822 requests for NXX codes waiting to be filled.<sup>34</sup> The number of outstanding requests is more than enough to fill an entire area code on its own.<sup>35</sup> The pent-up demand has risen 180% in the past nine months, from 293 outstanding requests in December, 1997, to 822 outstanding requests in September, 1998.

The increase in pent-up demand shows that the Commission’s current policies have not provided sufficient numbering resources to satisfy the existing demand. However, it also underscores another, even more troubling, concern: As the pent-up demand grows larger and larger, more and more NXX codes are needed simply to satisfy existing demand and new area codes provide fewer and fewer NXX codes for future growth. With the amount of pent-up demand currently in place, new area code relief projects will struggle just to “catch up” with the pent-up demand.

As the lines for new NXX codes grow, the situation becomes more and more severe. Further delay in implementing overlay area codes in the high growth area codes could seriously interfere with the Commission’s ability to solve the numbering shortage in the future. As discussed in Part I.C., below, the Commission needs to adopt overlay area codes now to eliminate rationing and pent-up demand, and to provide adequate numbering resources for the future.

**2. California Is The Only State In The Nation To Ban Overlay Area Codes, And The Numbering Shortage In This State Is Far Worse Than The Rest Of The Nation.**

Some carriers contend that the entire nation is grappling with numbering shortages, implying that California’s numbering shortages are no different from the shortages in other states. While it is true that other states are facing numbering shortages, the shortage of telephone numbers in California is many times worse than shortages in the rest of the country

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<sup>34</sup> See NANPA NXX Code Lottery Report No. 25.

<sup>35</sup> An NPA contains 792 assignable NXXs, or 7,920,000 assignable telephone numbers.



combined. Moreover, other states are increasingly turning to overlay area codes as a preferred method of area code relief.

California is the only state in the Nation that we are aware of that prohibits overlay area codes, and its NXX code shortages are far worse than any other state. Only 15% of the area codes in the rest of the nation are in some form of rationing, compared to 73% of the area codes in California.<sup>36</sup> Last month alone, California denied far more than three times the total number of code requests denied in the rest of the Nation combined.<sup>37</sup> The plain and simple fact is that no other state faces shortages and rationing anywhere near as severe as California.

Other states have affirmatively embraced overlay area codes as a simple and efficient long-term number policy, one that assures access to numbering resources. The number of states that have adopted overlay area codes is growing rapidly. Overlays have been adopted in Chicago,<sup>38</sup> Pennsylvania,<sup>39</sup> Dallas and Houston,<sup>40</sup> Manhattan,<sup>41</sup> Miami,<sup>42</sup> Atlanta,<sup>43</sup> and Denver.<sup>44</sup> Overlay area codes are being adopted for rural as well as urban areas: Maryland adopted a statewide policy in favor of overlay area codes, implementing two overlays over their two

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<sup>36</sup> See Ireland Decl. (Attachment A), at ¶ 4.

<sup>37</sup> *Id.*

<sup>38</sup> See *Citizen Utils. Bd.*, Docket Nos. 97-0192 & 97-0211, Order, 1998 WL 324145 (Ill. C.C. May 6, 1998).

<sup>39</sup> The Pennsylvania Public Utility Commission adopted two overlays in the greater Pennsylvania area, one over the 215 area code and one over the 610 area code. See *In re: 215/610 Area Code Relief Plan*, P-00961061, Opinion & Order (Pa. P.U.C. May 21, 1998).

<sup>40</sup> The Texas Public Utility Commission actually adopted retroactive overlays in Dallas and Houston, erasing geographic split lines created by earlier area code relief plans. See *Numbering Plan Area Code Relief Planning for the 214/972 Area Codes and Numbering Plan Area Code Relief Planning for the 713/281 Area Codes*, Project Nos. 16899 & 16900, Order (Texas P.U.C. July 10, 1998).

<sup>41</sup> The New York Public Service Commission adopted the 646 area code to overlay the 212 area code, but it requested that the FCC waive its 10-digit mandatory dialing requirement for the overlay and delayed implementation of the overlay pending FCC consideration of that request. See *Proceeding on Motion of the Commission, Pursuant to Section 97(2) of the Public Service Law, to Evaluate the Options for Making Additional Central Office and/or Area Codes Available in the 212 and 917 Area Codes of New York City*, Case 96-C-1158, Opinion No. 97-18 (1997 WL 839977 (N.Y. P.S.C. Dec. 10, 1997)); modified by *Order Approving Postponement of Activation Date* (March 25, 1998) (delaying implementation of overlay pending FCC ruling on petition to permit 7-digit dialing). The FCC denied the Public Service Commission's petition on July 20, 1998. *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii)*, Order, DA 98-1434 (FCC Common Carrier Bureau July 20, 1998).

<sup>42</sup> The Florida Public Service Commission adopted a "concentrated growth" overlay (the 786, or "SUN," area code) over the 305 area code, to be implemented July 1, 1998. See *Review of Proposed Numbering Plan Relief for the 305 Area Code*, Docket No. 971058-TL, Order No. PSC-98-0040-FOF-TL (Fla. PSC Jan. 6, 1998), modified on reconsideration, Decision No. PSC-98-0812-FOF-TL (1998 WL 456697) (June 19, 1998).

<sup>43</sup> See *BellSouth Telecommunication Inc.'s Jeopardy Filing of New Area Code for Numbering Plan Area Relief for the 770 Area Code and 404 Area Code*, Docket No. 7423-U, Order (Ga. P.S.C. Aug. 8, 1997).

<sup>44</sup> See *Relief for the 303 Area Code*, 179 P.U.R.4<sup>th</sup> 377 (1997 WL 610892) (Col. P.U.C. July 29, 1997), reconsideration denied, Second Decision & Order, C.98-605 (Col. P.U.C. June 4, 1998).

existing area codes (including urban areas such as the greater Washington, D.C. metro area and Baltimore) and announced that all future area codes in that State would be overlays;<sup>45</sup> and Kentucky has adopted one area code for Western part of the State (including Louisville).<sup>46</sup> These states have found that the benefits of overlays – minimizing disruption to businesses and consumers caused by repeated area code changes, maximizing the efficient use of scarce NXXs, providing prompt relief, and ensuring that all carriers and customers have ready and equal access to numbering resources – make overlays the natural and most efficient choice for area code relief in areas with high demand for numbering resources. The same is even more true in the high demand urban areas of California, particularly in light of the acute shortage of available telephone numbers.

### **3. Rationing Harms All Carriers, Their Customers, And Competition**

There should be no doubt that the continued, persistent rationing of NXX codes in this State is causing substantial harm to carriers and customers alike. A few months ago, MediaOne requested an “exemption” from the lottery in order to get immediate assignment of NXX codes, claiming that it had been unable to secure “initial” NXX codes in a number of NPAs through the monthly NXX code lottery, and alleging that its inability to secure NXX codes was preventing it from entering the local exchange market.<sup>47</sup> After MediaOne’s motion was (properly) denied by the Commission in Decision 98-07-096, Sprint PCS requested an exemption from the lottery to be assigned two “growth” codes in the 510 NPA, claiming that it would not have sufficient telephone numbers for the coming holiday season to meet anticipated growth.<sup>48</sup> A number of carriers announced, in their comments regarding the MediaOne motion, that they too would seek an exemption if the Commission granted an exemption for MediaOne.<sup>49</sup> While the Commission properly has refused to grant exceptions to the NXX code lottery, the motions

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<sup>45</sup> See *New Telephone Area Codes*, 86 Md. P.S.C. 438, 165 P.U.R.4<sup>th</sup> 344 (1995 WL 770820) (Md. P.S.C. Nov. 22, 1995), *rehearing denied sub nom.* 1996 WL 677327 (Md. P.S.C. Feb. 13, 1996).

<sup>46</sup> See *Area Code Exhaustion and Relief*, Admin. Case No. 373 (1998 WL 406822) (Ky. P.S.C. Apr. 17, 1998).

<sup>47</sup> See *Emergency Motion for Immediate Allocation of NXX Codes to MediaOne Telecommunications of California, Inc.* (filed May 6, 1998).

<sup>48</sup> See *Emergency Motion of Sprint PCS (U-3062-C) for Immediate Allocation of NXX Codes in the 510 Area Code* (filed Aug. 6, 1998). The Commission has not yet ruled on Sprint PCS’s motion.

<sup>49</sup> See, e.g. *Cox California Telecom II, L.L.C.’s (U-5684-C) Response to the Emergency Motion of MediaOne Telecommunications of California, Inc.* (filed May 21, 1998); *Response of Teligent, Inc. (U-5803-C) to Emergency Motion of MediaOne Telecommunications of California, Inc.* (filed May 21, 1998). See also *Opposition of*

underscore the real harm that is being caused by the extreme and continued shortage of NXX codes in this State.<sup>50</sup>

The fact that carriers are being harmed by NXX code rationing should not surprise the Commission, given the duration and severity of the numbering shortages in this State. By its very nature, NXX code rationing causes harm to carriers by denying them needed telephone numbers. Rationing occurs because there is insufficient supply to satisfy demand, and, by definition, it means that some carriers will not have the NXX codes that they believe they need to do business. Rationing of NXX codes, like rationing of any other important commodity, has a real and significant impact on the behavior of carriers and businesses.

In general, rationing has a significant adverse effect on carriers' behavior. Carriers are forced to make business decisions based on the luck of the draw in the monthly NXX code lottery. A carrier may find that by "winning" an NXX code, it receives far more than 10,000 assignable telephone numbers; it also receives an unfair and unjustified competitive advantage over carriers that are not so lucky.

Rationing also can significantly affect business behavior in this State. Businesses, particularly those seeking large blocks of telephone numbers for new businesses or business expansion, may be forced to select a local service provider that it otherwise would not, simply because one carrier has sufficient unassigned "blocks" of telephone numbers. Alternatively, a small business may choose to delay expansion in a particular area, for no reason other than its inability to secure needed blocks of telephone numbers from its selected carrier. A large businesses may favor business expansion in areas that have sufficient numbering resources, and disfavor expansion in areas, such as California's major metropolitan areas, where there are persistent and continued numbering shortages. Although it may be difficult to ascertain the effect that numbering shortages have had on business decisions to date, the longer NXX code rationing stays in place (particularly since California's numbering shortages are far more severe than other states), the greater the potential impact on business decisions.

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Nextlink California, L.L.C. and Teleport Communications Group to MediaOne Telecommunications of California Inc.'s Emergency Motion for Immediate Allocation of NXX Codes (filed May 21, 1998).

<sup>50</sup> Decision 98-07-096. In its the *Pennsylvania Order*, the FCC clarified that it has not delegated any authority to state commissions to grant any exceptions from rationing, and it requested advice from the North American Numbering Council (NANC) on whether it should delegate such authority to either state commissions or to NANPA. See *Pennsylvania Order*, at ¶ 51.

**4. But Rationing Under The Current Commission Rules Harms Us And Our Customers More Than CLECs**

We are suffering serious harm to our business due to our inability to secure the NXX codes necessary to provide service to our customers, and our customers similarly are being harmed. As explained in the accompanying Declaration of Bill F. Powers, Pacific Bell's Sales Vice President, Priority Markets (incorporated herein as Attachment B), in the past eleven months alone, we have been unable to meet requests from our business customers in the San Francisco Bay Area for more than 136,800 telephone numbers.<sup>51</sup> As the number shortages grow more severe, we have fewer and fewer available numbers, and we receive more and more requests for numbers that we cannot provide. Because we do not have the telephone numbers they require, our loyal business customers are left standing in line with us each month at the Commission's NXX code lottery.

We are experiencing far more harm from numbering shortages than other carriers, because we have fewer "free" telephone numbers and we are unable to meet the demands from our existing customers. Number shortages thus favor CLECs, who have more "free" telephone numbers and have a better chance to get more in the monthly NXX code lottery, based on the existing lottery rules.

Since 1996, CLECs have received the vast majority of NXX codes assigned in this State. According to information from code administration (NANPA and CNCA), CLECs have received more than one-half of all of the NXX codes assigned in this State since 1995, while ILECs have received less than one out of five assigned NXX codes. CLECs have been assigned approximately three times more NXX codes than ILECs during this period. CLECs have received an even larger percentage of the assigned NXX codes in 1998, receiving 725 NXX codes out of a total of 1,188 assigned through August (more than 60 percent):

<u>Year</u>	<u>CLEC</u>	<u>ILEC</u>	<u>Wireless</u>	<u>Total</u>
1996	601	304	200	1,105
1997	530	191	651	1,372
1998 <sup>52</sup>	725	136	327	1,188
<b>TOTAL</b>	<b>1,856</b>	<b>631</b>	<b>1,178</b>	<b>3,665</b>

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<sup>51</sup> Powers Decl., at ¶ 5.

<sup>52</sup> The information in this chart is from the CNCA/NANPA's NXX Code Assignment Report (Sept. 1, 1998 version). The data is compiled for code assignments through August, 1998.

Although CLECs have received the majority of NXX codes, they are actually using only a fraction of the telephone numbers assigned to them. Assuming a high estimate of CLEC NXX code utilization (25 percent, from the NXX code utilization survey conducted by the State of Colorado), CLECs have accumulated 14 million spare telephone numbers in this State since 1996.<sup>53</sup> In contrast, assuming a low utilization percentage (80 percent) for incumbent LEC NXX codes, all incumbent LECs combined have been able to secure less than one-tenth of that during the same period.<sup>54</sup>

With the current lottery structure, assigning 60 percent of the codes to the “initial” category and 40 percent of the codes to the “growth” category, CLECs, who request a high percentage of “initial” codes, have an immediate and substantial advantage in the lottery over carriers, such as Pacific Bell, who need “growth” codes. Thus, under the rationing policy adopted by the Commission, CLECs get more NXX codes, even if they do not have customers and only use a small fraction of telephone numbers in the NXX codes they are assigned. Throughout the history of the lottery, we have received less than 10 percent of the codes we have requested; all carriers combined received over 20 percent.<sup>55</sup> Thus, we have been roughly one-half as successful in securing the telephone numbers we need than the industry average. Unlike CLECs, we suffer far more when we are unable to secure the numbers we need – when we lose a customer, we lose goodwill created by years of providing quality service, for no reason other than not being able to secure telephone numbers to meet our customer’s needs.

In light of the fact that shortages are harming Pacific more than CLECs, and CLECs are receiving the majority of all codes assigned under the current system, the CLECs have a perverse incentive to support the status quo, because the status quo causes more harm to incumbent carriers than to CLECs. The status quo allows CLECs to win customers for no reason other than the fact that they have spare telephone numbers that we do not, and it allows them to accumulate more and more free telephone numbers and number blocks. Not surprisingly, CLECs continue to “raise the bar” against overlays, asking that one long-term project after

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<sup>53</sup>  $1,863 \times (1 - .25) = 1,396.3$ . We previously discussed the Colorado survey in our May 27, 1998 Comments Regarding 619 Area Code Relief Issues (at 2-3). It is very likely (particularly since they have received so many NXX codes since 1996) that CLEC utilization percentage in California is even lower than the 25% found in the Colorado survey.

<sup>54</sup>  $633 \times .8 = 126.6$ , or approximately 8% of 1,396.3. 80% utilization most certainly underestimates our actual utilization, particularly in light of the extended shortages and rationing of NXX codes in this State.

<sup>55</sup> See Powers Decl., at 4. The percentage of code requests filled in the lottery is reported each month in the monthly NXX Lottery Report.

another be completed before overlays area even considered for area code relief – first, they wanted LNP, and then, when LNP was successfully implemented, 1,000-block pooling, and, and now line-level pooling or vacant number porting. The simple fact is, CLECs have an incentive to advocate policies (such as opposing overlays) that worsen number shortages and rationing.

#### **4. NXX CODE CONSERVATION CANNOT SOLVE THE CURRENT NUMBER SHORTAGE**

Code conservation options (as WorldCom advised the FCC regarding one such option, number pooling) “cannot be invoked like some magic wand to make the problem of number exhaust simply vanish.”<sup>56</sup> While conservation issues will be addressed in detail during the Commission-sponsored code conservation workshops and the number pooling task force, the Commission should be aware that code conservation cannot be relied on to solve the numbering crisis in this State.

Code conservation efforts will take time to develop and implement. In the *Pennsylvania Order*, the FCC emphasized that states may not order code conservation methods, such as number pooling, but, instead, must allow these issues to be resolved at the federal level.<sup>57</sup> As we explained in our code conservation comments, the Industry Carriers Compatibility Forum found in a December, 1996 report that 1,000-number block pooling would take 2-3 years to implement.<sup>58</sup> Developments in the NANC Numbering Resource Optimization working group confirm that 1,000-number block pooling cannot be implemented until December, 1999, at the earliest, and more likely mid-2000. Similarly, as we and GTE California explained in our recent filings concerning rate center consolidation, there is no way to consolidate rate centers in California without affecting end users’ rates for local service.<sup>59</sup>

Once conservation measures are developed and implemented, it will take some period of time before they have any meaningful impact on NXX code exhaust. Conservation techniques generally have little effect on telephone numbers that are already assigned, for most conservation efforts are designed to conserve the future demand for numbers and NXX codes. Unless carriers surrender codes they already have been assigned (which this Commission may

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<sup>56</sup> Reply Comments of WorldCom, Inc., at 1, DC 97-2234, CC Docket No. 92-237 (FCC filed Nov. 6, 1997).

<sup>57</sup> See *Pennsylvania Order*, ¶¶ 21-22.

<sup>58</sup> ICCF, “Report on Rating and Routing in a Competitive Local Environment,” ICCF96-1220-16, pp. 23-24.

<sup>59</sup> See Filing of Pacific Bell (U 1001 C) Pursuant to Ordering Paragraph 2 of Decision 98-08-037 (filed Sept. 14, 1998); Response of GTE California Incorporated (U 1002 C) to Decision 98-08-037 Requiring Identification of Certain Rate Centers (filed Sept. 14, 1998).

not order and most carriers are unlikely to do voluntarily), code conservation efforts will have little impact on area codes currently facing exhaust until a substantial period after they are implemented. Thus, even after the NANC and the FCC reach agreement on the conservation steps that should be taken for conservation measures such as number pooling, such steps likely will not have an appreciable effect on the exhaust of NPA's and the access to blocks of telephone numbers in the next few years.

California cannot wait years for relief from the extreme rationing of telephone numbers in this State. It is critical that the Commission act now to ensure a sufficient supply of NXX codes to meet demand as soon as possible. As the FCC stressed in the *Pennsylvania Order*, number conservation and area code relief are different things, and states must focus first and foremost on creating a sufficient supply of NXX codes by timely implementing area code relief.<sup>60</sup> The solution – the only solution – to the current numbering crisis is a policy that will ensure a sufficient supply of numbering resources to meet the needs of all carriers and all customers. The first step toward that solution, as discussed below, is to eliminate the ban on overlay area codes.

**B. GEOGRAPHIC SPLITS OF AREA CODES HAVE FAILED TO PROVIDE SUFFICIENT RELIEF AND HAVE EXACERBATED THE SHORTAGE OF NUMBERING RESOURCES IN THIS STATE**

One thing has become increasingly clear over the past two years: traditional two-way geographic splits of area codes do not provide enough relief to meet the high demand for NXX codes in California, particularly in the major urban areas of the State. Time and time again, two-way geographic splits have failed to provide sufficient relief to comply with industry standards, or even to end rationing of telephone numbers. As a result, consumers and businesses have had to bear the burden of changes to area codes in their area, and have had to dial 1+10-digits for an increasing percentage of calls, only to be told that they will soon have to go through the cost and expense of even more area code changes. Carriers go to the expense of developing an area code relief plan, including reprogramming their switches to open the new area code and to permit transitional dialing, only to find that by the time they have finished implementing the new area code, they remain in line waiting for the NXX codes they need to provide service to

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<sup>60</sup> *Pennsylvania Order*, at ¶ 22.

their customers. And the Commission faces increasing criticism as communities battle to avoid dividing their neighborhoods or to keep their area code at the expense of other communities.

Under the two primary criteria used to evaluate the effectiveness of any area code relief plan, geographic splits have proven to be entirely incapable of providing sufficient NXX codes in a timely fashion. Area code relief should, at a minimum, provide sufficient relief to meet industry requirements for minimum length of relief, and should provide sufficient relief to end rationing of NXX codes in the area affected by the area code relief plan. Of the ten geographic splits listed on page 23 of D.96-12-086, all but one failed to satisfy one or both of these requirements.

Eight of the ten geographic splits failed to meet industry standards for the minimum length of relief. Section 5.0 of the Industry Numbering Committee's NPA Code Relief Planning and Notification Guidelines require:

(a) The [area code] relief options shall cover a period of at least five years beyond the date of exhaust, and shall cover more than one relief activity, if necessary, during the time frame.

\* \* \*

(f) For each relief activity proposed in the plan, it is recommended that customers who undergo number changes shall not be required to change again for a period of 8-10 years.<sup>61</sup>

However, the average life of the ten geographic splits listed on page 23 of D.96-12-086 is projected to be far less than the INC standards, based on the 1998 industry-revised COCUS. The average life for all 20 area codes affected by the splits (ten "old" area codes, and ten "new" area codes) is projected to be 4.7 years. Thus, even the average life does not meet the Section 5(a) guideline requirement for the minimum amount of relief.

In the ten "old" area codes (where customers did not have to change their telephone numbers), the average life is projected to be even shorter: only 3.46 years. Eight of these area codes are projected to exhaust before the five year minimum period of relief required by Section 5(a):

<u>NPA</u>	<u>Length Of Relief</u>
<b>408</b>	<b>1.8 years, rationing entire time</b>
<b>415</b>	<b>2.7 years, rationing entire time</b>

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<sup>61</sup> Industry Numbering Committee, *NPA Code Relief Planning and Notification Guidelines*, INC 97-0404-016, § 5.0(a), (f) (issued April 4, 1997).



<b>510</b>	<b>2.8 years, rationing entire time</b>
<b>714</b>	<b>2.8 years, rationing entire time</b>
<b>619</b>	<b>2.8 years, rationing entire time</b>
<b>310</b>	<b>3.3 years, rationing entire time</b>
<b>818</b>	<b>3.5 years, rationing entire time</b>
<b>213</b>	<b>3.8 years, rationing projected</b>
<b>209</b>	<b>5.4 years</b>
<b>916</b>	<b>5.7 years<sup>62</sup></b>

The ten "new" area codes suffer a similar fate. The average life of the ten "new" area codes is projected to be a mere 5.9 years, far below the 8-10 minimum life recommended by Section 5(f) of the INC NPA relief guidelines. Eight of the ten relief projects will fail to meet the eight year requirement, and none will last as long as ten years:

<u>NPA</u>	<u>Length Of Relief</u>
<b>760</b>	<b>3.8 years</b>
<b>650</b>	<b>3.9 years, rationing 4 months after EOM</b>
<b>925</b>	<b>4.6 years</b>
<b>323</b>	<b>4.8 years</b>
<b>562</b>	<b>5 years</b>
<b>559</b>	<b>5.9 years</b>
<b>831</b>	<b>7.0 years</b>
<b>949</b>	<b>7.8 years</b>
<b>626</b>	<b>8.0 years</b>
<b>530</b>	<b>8.2 years<sup>63</sup></b>

The ten geographic splits not only failed to meet the INC guidelines for length of relief; they also failed to provide sufficient NXX codes to end rationing in the affected areas. Of the five geographic splits that have been fully implemented, four of the five failed to end rationing on at least one side of the split (310/562, 619/760, 818/626, and 415/650). Of the remaining five geographic splits that are currently being implemented, four likely will not end rationing on at least one side of the split (408/831, 714/949, 510/925, and 213/323). And five of "new" area codes - 650, 925, 323, 562, 760 - may require rationing before they are relieved - in fact, the 650 area code already is in the lottery, lasting only four months before it started

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<sup>62</sup> These projections are based on the industry-adjusted 1998 COCUS. Even the two area codes that currently are projected to meet the five year minimum (the 209 and 916 NPAs) ultimately may not last five years. Both have projected lives only a fraction above five years (5.4 and 5.7, respectively), and the demand for NXX codes in the 916 area code already is exceeding projections by 20 percent, as noted above.

<sup>63</sup> Again, these projections are based on the industry-adjusted 1998 COCUS. As with the 209 and 916 NPAs, the 626 and 530 NPAs also may not last the required eight years. The 626 area code has a projected life of only eight years, right at the minimum, and, as discussed above, current demand for NXX codes in this area code is 70 percent

rationing. In sum, it appears that eight of the ten geographic split plans listed in D.96-12-086 will fail to eliminate rationing, and several may result in rationing on both sides of the geographic split lines.

Thus, of the ten geographic split relief plans listed on page 23 of D.96-12-086, only one successfully eliminated rationing in the entire area and met the industry criteria for length of relief. That geographic split, in the mostly rural 916/530 NPA, has projected lives of only 5.7 for the 916 area code and 8.2 for the 530 area code, calculated using the industry-modified 1998 COCUS.<sup>64</sup>

Traditional two-way geographic splits have a proven track record: they have repeatedly failed to provide an adequate supply of NXX codes to keep up with demand under current conditions. Thus, the Commission cannot rely on two-way geographic splits to provide relief for area codes for future relief projects. Instead, the Commission needs to rely on overlay area codes to ensure a timely and efficient supply of NXX codes, as discussed below.

### **C. OVERLAY AREA CODES PROVIDE MORE EFFECTIVE RELIEF SOONER THAN AREA CODE SPLITS**

Overlay area codes are far superior to geographic splits in providing relief of an area code when there is high demand for NXX codes in an area: they are faster and easier to implement, they provide more effective relief, they conserve area codes, and they can be easily relieved when they exhaust.<sup>65</sup> Given the current shortages, rationing, and continued high demand for NXX codes, overlay area codes are exactly what this State needs, and needs immediately, to end the numbering crisis.

Overlays provide quicker relief than geographic splits, for two reasons. First, overlays do not require the 9-12 month permissive and mandatory periods to allow customers to learn, on a "call-by-call-basis," the changed area codes for new telephone numbers. Instead, as the Commission found with it ordered the 310/424 overlay, initial overlays in an area can be implemented in a year, with a three-month mandatory 1+10-digit dialing period. Overlays also involve far less work for carriers, as existing NXXs do not need to be reprogrammed, making it

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above the 1998 COCUS. The 530 area code has a projected life of only 8.2 years, only two-tenths more than the eight year minimum, and current demand for NXX codes in this area code is 130 percent above the 1998 COCUS.

<sup>64</sup> One other geographic split, the 209/559, is likely to end rationing in both area codes, but the "new" area code is projected to last only 5.9 years.

<sup>65</sup> Part II below discusses a specific example of how an overlay can provide quicker and more efficient relief, using the 415/650 NPAs.

is easier to schedule relief earlier than with geographic splits when multiple relief projects are being implemented simultaneously. As a result, even with the initial one-year education program associated with implementing 1+10-digit dialing, overlays can be implemented approximately 9-12 months earlier than geographic splits.

When the Commission adopted the overlay ban, it was uncertain whether overlays could be implemented quicker than geographic splits. In D.96-12-086, the Commission rejected Pacific's argument that overlays would expedite area code relief, finding that "an overlay poses its own potential risks of delay."<sup>66</sup> In its Decision approving the 310/424 overlay, the Commission clarified that overlays do not require the same 9-12 month permissive and mandatory dialing periods as geographic splits, and that allows an overlay area code to be implemented at least nine months earlier than a area code implemented as part of a geographic split.<sup>67</sup> Thus, there can no longer be any legitimate dispute that overlays expedite relief over geographic splits.

Overlays also provide more efficient use of the 792 NXX codes introduced with a new area code. With an overlay area code, all 792 NXXs can go where the demand is throughout the area, and all new NXXs are available to meet existing demand. A geographic split, in contrast, severs the area where codes are available, leaving some codes unused on one side of the split line while carriers stand in line for codes on the other side of the split line. While a geographic split could be as efficient as an overlay in theory, (*i.e.*, if the geographic area subject to the split had homogeneous level of demand throughout the geographic area and the split line could be drawn straight down the middle of the geographic area, without regard to natural geographic and political boundaries), theory never becomes reality. In fact, all geographic splits are designed, in accordance with industry standards, to provide less relief for the area keeping the area code, and to provide more relief to customers who have to change their telephone numbers.

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<sup>66</sup> D.96-12-086, at 29-30; *see also* D.97-09-050, at 3-4. The Commission also believed at that time that geographic splits could be implemented quickly enough to avoid rationing. However, experience has dramatically proven that geographic splits take so long to create, debate, approve, and implement, that they are incapable of keeping up with current demand.

<sup>67</sup> D.98-05-021, at 27-30. The Commission required mandatory 1+10-digit dialing three months prior to implementation of the overlay as a transitional dialing measure; however, that three month period was run concurrently with the 12-month customer education program, and it did not delay implementation of relief.

Under the implementation schedule adopted by the Commission, the 310/424 overlay will be implemented in July, 1999. If the Commission had split the 310 area code, in accordance with the CLEC-proposed plan, the 310 area code would not have been relieved until April, 2000, a full nine months later than the overlay area code. *See* D.98-05-021, at 11 (reproducing the industry's proposed implementation schedule).

An overlay area code does not have such "designed inefficiencies" – NXX codes go where they are needed.

Overlays also conserve NPAs when subsequent relief becomes necessary in high demand areas. Where an overlay is implemented over an area, only one new area code is necessary to provide further relief. However, where an area code is split into two separate area codes, two new area codes (one for each area code) are necessary to provide relief throughout the geographic area covered by the overlay – resulting in four area codes in the same area. Additional relief with an overlay requires only one new area code, resulting in only three area codes in the same area (the original area code and two overlay area codes).<sup>68</sup> And the number of area codes used in that area grows exponentially with further relief. Conservation of NPAs is important now, given the high rate at which NPAs are being used throughout the nation; it will become increasingly critical as the nation approaches exhaust of the North American Numbering Plan.

Finally, overlay area codes not only conserve NPAs, and use them more efficiently, but they also can be implemented rapidly. Once an overlay is introduced in an area, subsequent overlays can be implemented within six months, preventing rationing even when an unexpected increase in demand for NXX codes causes rapid exhaust of an area code.

#### **D. THE COMMISSION'S COMPETITIVE CONCERNS REGARDING OVERLAYS HAVE BEEN RESOLVED**

When the Commission first rejected overlay area codes, it did so based on alleged concerns regarding potential adverse effects on competition. In D.95-08-052 (adopting the 310/562 split and rejecting an overlay) and D.96-08-028 (examining competitive issues associated with overlays), the Commission carefully examined the potential effects on competition at that time and held that implementation of permanent LNP and mandatory 1+10-digit dialing were "necessary and sufficient to adequately mitigate anticompetitive concerns of an overlay."<sup>69</sup> Since then, the Commission and the FCC have adopted policies that completely resolve the Commission's concerns, Pacific and the industry have implemented those policies, and there can no longer be any legitimate argument that an overlay area code would cause any

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<sup>68</sup> Of course, since the geographic splits use a fourth area code, there are 792 more NXXs in the same geographic area. However, depending on the distribution of demand in the area, many of these NXXs may not be used efficiently and may sit unused while shortages exist in other parts of the same geographic area. Again, overlays avoid this inefficiency by allowing the NXXs to go where the demand is.

harm to competition. In fact, the Commission explicitly found that the 310/424 overlay relief plan met the requisite criteria for competitive neutrality.<sup>70</sup>

Incumbent LECs have successfully implemented permanent LNP in FCC-mandated Phases 1 and 2, and we will complete Phase 3 implementation in just a few days (October 18<sup>th</sup>). Numbers are being ported in these areas today. In less than 60 days, all five phases of the FCC-mandated phases will be fully implemented, and 94 percent of Pacific's access lines throughout the State will be available for porting, including all access lines in the largest metropolitan areas of the State. As a result, customers can freely change carriers without changing their telephone numbers, and virtually all of the telephone numbers assigned to the incumbent LECs are available to all carriers. CLECs have complete access to all of the telephone numbers that we have in place, working for customers – the overwhelming majority of all of our telephone numbers.

The rules adopted by the Commission and the FCC requiring mandatory 1+10-digit dialing for all calls have eliminated perceived concerns regarding dialing disparities for customers assigned numbers in the overlaid area code. These policies are in place and working – in fact, this coming Spring, after nine months of customer education, callers in the 310/424 area code will implement mandatory 1+10-digit dialing for all calls as part of implementation of the 310/424 overlay. As part of that effort, an industry task force has spent much time and effort developing a comprehensive program to educate customers regarding the new dialing pattern. As shown by our experience with the 310/424 overlay plan, and as other states have found in implementing overlays, mandatory 1+10-digit dialing can be accomplished in an efficient and cost-effective manner.

The FCC has resolved any perceived concerns regarding new entrants' access to "first" NXX codes in an exhausting NPA. FCC regulations require a set-aside of codes in the exhausting NPA to allow carriers to receive an initial code for a 90-day period prior to implementation of the overlay.<sup>71</sup> In its decision adopting the 310/424 overlay, the Commission applied that rule and established a process to comply with the policy by setting aside sufficient

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<sup>69</sup> See D.96-08-028, at Conclusion of Law No. 13 (emphasis added).

<sup>70</sup> D.98-05-021, at 24.

<sup>71</sup> 47 C.F.R. § 52.19(c)(3)(iii).

codes for all eligible carriers that might request one.<sup>72</sup> Thus, there can be no concern that new entrants will not be able to get an NXX code in the exhausting area code.

In spite of these developments – implementation of permanent LNP, implementation of mandatory 1+10-digit dialing and customer education, set-aside of "first" codes for new entrants – CLECs continue to complain that an overlay would be anticompetitive. Specifically, CLECs like to claim that incumbent LECs have a huge base of telephone numbers that we can use to provide additional lines to customers in the existing area code. However, as we have shown in prior comments in this docket, these claims are simply wrong. In fact, if any group of carriers has an unfair access to numbering resources in this State, it is the CLECs. Permanent LNP gives CLECs access to all of the telephone numbers we have assigned to our customers, in addition to their own assigned NXX codes. The only issue remaining is available telephone numbers, those that are not assigned to customers. In this category, thanks to years of priority access to codes in the Commission's monthly NXX code lottery (as discussed above), CLECs have the clear advantage: they have been accumulating a large warehouse of unassigned telephone numbers over the past several years, and have more available telephone numbers than we do.

In our May 27, 1998, comments regarding the 619 area code relief plan, we showed that, at that time, CLECs almost certainly had a significantly larger base of unassigned telephone numbers in the 619 area code than we did.<sup>73</sup> We also showed that, if an overlay had been adopted, CLECs would have more than twice as many available telephone numbers in the 619 area code than we would by the time the overlay was implemented. This is true in many other area codes as well. Statewide, CLECs have been assigned 1,856 NXX codes since 1995. Assuming the 25% CLEC utilization rate found in the Colorado usage survey (likely higher than the actual utilization percentage for CLECs in California), CLECs have acquired almost 14 million spare telephone numbers during this period.<sup>74</sup> In comparison, incumbent LECs received 631 NXXs since 1996. Assuming the 80% ILEC utilization rate found in the Colorado utilization survey (likely lower than our actual utilization percentage), all incumbent LECs combined may have, at most, acquired just slightly over a million unassigned telephone numbers

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<sup>72</sup> D.98-05-021, at 26-27.

<sup>73</sup> May 27, 1998 Comments of Pacific Bell (U 1001 C) In Response To The ALJ's May 14, 1998 Ruling Soliciting Comments On 619 Area Code Relief Issues, at 4-5.

<sup>74</sup>  $1,856 * .75 = 139.2$ , or 13,920,000 telephone numbers.

during that same period.<sup>75</sup> In sum, CLECs have acquired more than 11 times more free and unassigned telephone numbers than all of the incumbent LECs combined since 1995. When a business wants a large block of contiguous unassigned telephone numbers, or a customer wants a second line in its home in the same area code as the initial telephone number, it is the CLECs, not the incumbent carriers, who are more likely to be able to satisfy those requests.

Today, under the Commission's current policies, geographic splits create a far more serious threat to competition than overlay area codes. Free and full competition cannot exist without sufficient numbering resources for all providers. The acute shortage of numbering resources, caused by continuous, lengthy, and ineffective geographic splits, is causing serious and substantial harm to us right now, in today's marketplace. The Commission must resolve these competitive concerns by permitting overlay area codes and making sufficient telephone numbers available for all, as soon as possible.

**E. OVERLAYS ARE BETTER FOR CUSTOMERS THAN SPLITS,  
PARTICULARLY REPEATED SPLITS**

The geographic split relief plans adopted in the past few years will result in changes to nearly 28 million telephone numbers in this State.<sup>76</sup> Changing area codes for so many telephone numbers in such a short period of time has caused substantial disruption and costs to California consumers and businesses. Particularly in the major metropolitan areas of the State, callers have been forced to learn, on a "call-by-call" basis, one new area code after another, as a seemingly endless parade of area codes are introduced into the same geographic area. Indeed, callers have been subjected to so many area code changes so quickly that it has been and will be increasingly difficult to absorb all of the changes. For example, callers in the San Francisco Bay Area began adjusting to the 650 split from the 415 NPA only to find that, just a few months later, that they had to also learn on a "call-by-call" basis the 510 numbers that changed to the 925 area code. And even as they were learning the new 650 and 925 area codes, those same callers were forced to learn the new 831 area code, splitting from the 408 area code. And if that was not enough, at the same time that those splits were implemented, callers received notices of public meetings for the next round of relief of the 415, 510, 408, and 650 area codes. In many

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<sup>75</sup> 631\*.2=126.2, or 1,262,000 telephone numbers.

<sup>76</sup> An estimated 2,776 NXXs (27.76 million telephone numbers) have or soon will changed area codes due to the 12 geographic splits adopted by the Commission since 1995, including the 10 listed in D.96-12-086 and the 805/661 and 619/858/935 geographic splits.

circumstances, the industry has issued notices for public meetings on the next round of relief on an area code while simultaneously implementing the earlier relief project in the same area. Callers cannot help but be confused by such overlapping relief projects, small and large businesses alike cannot help but lose some customers in the confusion (particularly international customers) and bear substantial costs to repeatedly change stationary, business cards, customer information databases, and advertisements.

The need for rapid relief will soon create the unenviable situation where the Commission has to return to an area that has received a new area code in the past few years (where all customers had to change their telephone numbers), and tell those customers that they again have to bear the burden of area code relief. The "new" area codes that will soon require relief are the 650 and 760 area codes, where relief planning is well underway, the 562 NPA, and the 925 NPA. If the Commission does not adopt overlays in these areas, customers will face two telephone number changes in only a few short years.

With overlays, customers do not have to bear these costs. Customers do not have to change their telephone numbers again. Particularly here, where the State is faced with rapid and repeated exhaust of area codes in the same geographic areas, overlays are the necessary and logical choice for area code relief to avoid repeated, costly area code changes. It simply is unacceptable to ask customers to bear the burden of changing their area codes every few years.

In D.96-12-086, the Commission focused on perceived public preferences for overlays or splits, relying on customer preference surveys submitted by Pacific, GTE California, and the CLC coalition. Based almost exclusively on the results of those surveys, the Commission adopted its ban against overlay area codes, believing that the public did not support overlay area codes. We believe that this decision was seriously in error, for several reasons.

First and foremost, public opinion surveys are completely the wrong vehicle for the Commission to use to gauge public support for a novel method of area code relief. No public opinion survey, no matter how well crafted, can explain in sufficient detail the actual impact of an overlay area code, or answer all of the survey respondent's potential questions. Respondents certainly would be inclined not to choose the novel approach, when their questions cannot be answered. Faced with unanswered questions, customers are far more likely to choose the area code relief method that they are familiar with (geographic splits) over the method that is new and novel (overlays). Thus, public interest surveys are inherently biased against overlays.



Second, it is unfair to consumers to gauge public opinion based on hypothetical questions about potential area code relief alternatives. Area codes have real, serious, and substantial affects on the daily lives of people: real, actual geographic split lines sever callers' communities, disrupt customers as they learn new area codes for the existing numbers, and cause a real, substantial impact on their lives and businesses. It is unreasonable and unfair for the Commission to make decisions regarding specific area code relief projects based on the responses to such hypothetical questions, and it is unconscionable to use responses to hypothetical survey questions as a basis to disregard the stated public preferences for an overlay, particularly if the public clearly and unequivocally favors an overlay at statutorily-required public meetings. At best, answers to hypothetical questions in a public opinion survey provide the Commission only with information it already knows: customers prefer to be left alone and do not want to have to deal with any changes in telephone numbers or dialing patterns that are necessitated by any form of area code relief. Surveys do not and cannot show that, under any and all circumstances, customers would choose one area code relief alternative over another in any specific area. Customer's specific choices and preferences regarding area code relief – the choices faced by the industry, local jurisdictions, the public, and the Commission in each area code relief plan – cannot and should not be predetermined by responses to hypothetical questions that do not relate to the specific area code relief plans at issue.

Third, surveys (at best) identify public opinion at a specific point in time, and cannot and should not form the basis for a long-term policy, such as the multi-year ban on overlay area codes established in D.96-12-086. Public opinion, however, is not static, but changes over time. Even if the surveys could be considered to accurately track public opinion regarding overlays in 1996 – which they cannot – that does not mean that customers do and will continue to hold the same opinion for years, particularly as they bear increasing burdens and costs caused by the introduction of one new area code after another and the resulting increase in 1+10-digit dialing caused by shrinking area code boundaries.

Fourth, the surveys do not even speak to the situation that customers, the industry, and the Commission face today: the chronic shortage of telephone numbers caused by insufficient area code relief. Customers were not asked whether they would prefer overlays as opposed to having to change local service providers to get the telephone numbers they need for their home or business, or whether they would like to wait for their chosen service provider to secure the numbers they need. But that is precisely the choice that many of our customers face

today. Based on our first-hand experience with our customers, we believe that customers, first and foremost, want the telephone numbers they need.

Finally, even to the extent that the Commission believes the 1996 surveys should be given any weight at all (which, for the reasons stated above, they should not), the survey results suggest that public opinion would be much stronger in favor of overlays today than it was in 1996. Pacific's survey found increasing public support for an overlay where the overlay was assumed to last significantly longer than a geographic split.<sup>77</sup> Understandably, residential and business customers want area code relief that will have a sufficiently long life to avoid continuous introduction of new area codes and the attendant disruption, expense, and loss of business. Customers have lived through the past 2 years of almost constant area code splits, only to hear that another and yet another area code split will be just around the proverbial bend – the very opposite of what, if the survey results are accepted, customers allegedly wanted. Customers want effective relief, which overlays can provide, not one geographic split followed by another.

In any event, it is impossible to preserve 7-digit dialing for a majority of calls in urban areas, regardless what relief method is used. As the Commission recognized in D.96-12-086 when it adopted the overlay ban, "the proliferation of new NPAs covering ever-shrinking geographic areas" increases the percentage of calls requiring 1+10-digit dialing, particularly in densely populated regions.<sup>78</sup> The proliferation of area codes continues, and substantially more 1+10-digit dialing is taking place today in the State as a result of the 10 area code splits listed on page 23 of D.96-12-086. Even more 1+10-digit dialing will be created unless overlays are permitted – in the 310 NPA relief plan, we estimated that 71% of all calls would have been dialed using 1+10-digits if the Commission approved the 3-way split plan proposed by the CLECs.<sup>79</sup> As the Commission faces the upcoming area code relief plans, it will find that 1+10-digit dialing is increasingly becoming the standard, and 7-digit dialing the exception, and, regardless what method of area code relief it selects, customers in densely populated urban areas will be dialing 1+10-digits for the majority of their calls. Ultimately, the battle to preserve 7-digit dialing is doomed to failure, given the number of new area codes that have been and will soon be introduced in the major metropolitan areas of this State. Carriers' efforts to secure the

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<sup>77</sup> See D.96-12-086, at 11 (detailing results).

<sup>78</sup> D.96-12-086, at 34; *see also id.*, at 25-26.

<sup>79</sup> See March 20, 1998 Comments of the Overlay Coalition On 310 Area Code Relief Issues, at 9-10.

numbering resources that they need should not be held hostage to the effort to fight this losing battle.

**F. THE BAN AGAINST OVERLAY AREA CODES WAS NEVER INTENDED TO APPLY TO UPCOMING AREA CODE RELIEF PROJECTS**

When the Commission adopted the ban against overlay area codes in December, 1996, the Commission and the industry projected 11 area code relief projects would need to be implemented in California through the year 2000. The Commission reproduced the industry's planning table, reflecting the 11 relief projects, on page 23 its Decision 96-12-086. In the text of the decision, the Commission made clear that the ban against overlay area codes was intended to apply only to those specific area code relief plans listed on the table. Ordering Paragraph 1 states:

The Commission's statewide policy for area code relief planning shall direct that geographic splits be used for all new area codes scheduled to become operative through the end of the calendar year 2000 as set forth in the Table on page 23 of this decision with the possible exception of the next 310 NPA relief plan.<sup>80</sup>

The Commission clearly stated that its policy should apply to those specific relief projects listed on page 23 of the Decision. In the discussion section where it explains the policy, the Commission states:

Our adopted relief planning policy shall apply to the NPA relief plans identified in the attached schedule, excerpted from Tab 17 of Pacific's November 6, 1996, filing.<sup>81</sup>

The Commission used the phrase of "the next cycle" or "next phase" of relief as short-hand to describe those area codes that were intended to fall within the ban on overlays, and the Commission defined the "next cycle of relief" as those "relief plans scheduled to be implemented through the end of 2000,"<sup>82</sup> implicitly referring back to the table on page 23 of the Decision listing the planned 11 relief projects.

There was an obvious reason why the Commission listed the specific area code relief projects and reproduced the industry planning table detailing the schedule for those relief plans on page 23 of the Decision; the Commission intended that its Decision would require

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<sup>80</sup> D. 96-12-086, at Ordering Paragraph No. 1 (emphasis added).

<sup>81</sup> D.96-12-086, at 22 (emphasis added).

<sup>82</sup> D.96-12-086, at 22, 26, and Conclusions of Law Nos. 1 & 2.

geographic splits only for those area codes relief projects listed on page 23 of its decision. The Commission's intent is clear throughout the Decision. The Decision refers to the chart on page 23 more than once, and Ordering Paragraph 1 is explicit regarding which relief plans should fall within its policy. The discussion section also emphasized that the specific relief projects that would be implemented as splits were important, because "[a]s NPAs continue to shrink, it will become increasingly difficult to draw satisfactory boundaries for subsequent splits," and because "[a]s splits become progressively smaller and more contentious, the consumer preference for splits in these very small NPAs can be expected to diminish."<sup>83</sup> The Commission explicitly exempted from the ban the last California area code relief project listed on the table on page 23 (the second round of relief for the 310 area code), specifically due to its concerns with a subsequent split of the densely populated, high demand 310 NPA.<sup>84</sup>

As noted in the background section above, the growth in demand for telephone numbers has far exceeded the industry's consensus projection in December, 1996, and the Commission already has adopted more relief projects than those listed in D.96-12-086.<sup>85</sup> Several of these relief projects could be implemented in the year 2000 as overlays:

<u>Metropolitan Area</u>	<u>NPA</u>	
San Jose	408	<b>SUBSEQUENT RELIEF</b>
Anaheim/Orange County	714	<b>SUBSEQUENT RELIEF</b>
San Francisco	415	<b>SUBSEQUENT RELIEF</b>
Los Angeles	818	<b>SUBSEQUENT RELIEF</b>
Oakland/East Bay Area	510	<b>SUBSEQUENT RELIEF<sup>86</sup></b>

None of the area code relief projects listed above were listed on the industry's planning schedule in late 1996, and none of these projects are listed in the table on page 23 of Decision 96-12-086. In fact, all of these projects represent further relief for areas listed page 23 of Decision 96-12-086, areas where the geographic splits adopted by the Commission already failed to provide adequate relief. When the Commission adopted D.96-12-086, it did not intend that these area

<sup>83</sup> D.96-12-086, at Findings of Fact Nos. 38 & 39.

<sup>84</sup> See D.96-12-086, at Ordering Paragraph No. 1.

<sup>85</sup> The Commission already has adopted plans for the 10 relief projects listed on page 23 of D. 96-12-086, nine of which were geographic splits and one of which was an overlay (in the 310 NPA). In addition, the Commission also has adopted the relief plans for the two-way geographic split of the 805 area code (to the 805/661 NPAs) and, most recently, the three-way geographic split of the 619 NPA.

<sup>86</sup> Of course, even more subsequent relief plans – like those for the 650, 562, and 925 NPAs – are or will soon be in planning. The 650 area code, which was out of lottery only 4 months after the end of the mandatory dialing period associated with its split from the 415 area code, is already in planning for another phase of area code relief.

codes would fall within its ban, and the Commission should not now extend the ban to prohibit consideration of overlay area codes for these further relief projects.

The pending 408 NPA relief plan is an excellent example of why the ban should not be extended. In 1997, the Commission adopted a geographic split of the 408 NPA (into the 408 and 831 NPAs), in accordance with the overlay area code ban. However, when the industry members developed the 408/831 geographic split, they generally agreed that the subsequent area code relief plan for the 408 NPA would most likely require an overlay over the entire 408 NPA. However, the 408/831 relief plan almost certainly will not provide enough telephone numbers in the 408 area to avoid rationing or provide any meaningful remaining life of the 408 NPA, and subsequent relief of the 408 NPA is necessary. Due to the Commission's ban, however, the industry was unable to recommend a full overlay for the 408 NPA before the year 2001. Instead, the industry recommended splitting off a small portion of the 408 NPA, and then extending the new area code into an overlay over the reduced 408 NPA in 2001 – resulting in an overlay area code that spans the 408 NPA an overlay, yet also has a tiny, split off area where it is the only area code. The result is confusing and extremely disruptive for customers, who end up with an split/overlay area code, changing their area codes, and implementing mandatory 1+10-digit dialing. This plan also postpones the relief that is desperately needed now in the 408 NPA until after the overlay is implemented in 2001. If the Commission eliminated the ban, and adopted a single, NPA-wide overlay, it could avoid the confusing, disruptive split, and, instead, provide needed relief as quickly as possible.

The pending 408 NPA relief plan is but one example of how eliminating the ban would help customers and carriers; there are many more. Many of the other area codes listed above would also benefit from a clear Commission decision permitting overlays before 2001. The overlay ban interferes with industry efforts to develop reasonable and rational area code relief plans, it all but guarantees an inadequate supply of NXX codes to meet demand in major metropolitan areas, and it prohibits a cohesive statewide strategy that would ensure a sufficient supply of NXX codes for all carriers throughout the State. The overlay ban should not be applied to any relief projects except those specifically listed on page 23 of Decision 96-12-086; it should not be extended to any future area code relief projects.

## G. THE BAN HAS BEEN APPLIED IN VIOLATION OF THE PUBLIC UTILITIES CODE

The Public Utilities Code requires that, before the Commission adopts any area code relief plan, the telephone corporation proposing the new area code conduct at least three public meetings to address the upcoming area code change. At these meetings, the industry and the public must be allowed to discuss measures that may mitigate disruptions caused by the introduction of the new area code:

Whenever a telephone corporation proposes to establish a new area code, it shall ... (b) ... conduct at least three public meetings to give affected subscribers an opportunity to be heard on the potential impact of the proposal, *to discuss measures that may be taken to mitigate any potential disruptions, and to discuss measures that may be taken to reduce any economic hardships experienced by subscribers and customers....*<sup>87</sup>

An area code overlay is one way to mitigate potential disruptions caused by introducing a new area code, because an overlay allows every customer to keep his or her existing area code and telephone number. A geographic split usually requires that more than one million telephone numbers change area codes; an overlay always requires that zero telephone numbers change area codes.<sup>88</sup> Businesses do not have to change their customer address and telephone number databases for the new area code, because all of the existing numbers stay the same. Callers do not have to spend 9-12 months in permissive and mandatory dialing (before relief is effective), learning, on a "call by call" basis, the new area codes for their family, friends, and local businesses. Thus, an overlay area code provides a means to substantially mitigate the potential disruption caused by introducing a new area code, and, under the terms of the statute,

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<sup>87</sup> Public Utilities Code, Section 7930. Section 7930 was amended by AB 2716, which will become law on January 1, 1999 (the bill was signed by the Governor on September 16, 1998). AB 2716 requires discussions at public meetings regarding options to minimize disruptions caused by introducing a new area code:

Following the local jurisdiction meeting, the coordinator and the commission staff shall conduct at least three public meetings in the affected geographical area. The public meetings are to inform members of the public about the proposed area code relief options, and *to afford affected consumers an opportunity to discuss the potential impact of the proposed area code relief options and measures that may be taken to mitigate any potential disruptions.*

AB 2716, Section 4(e)(2) (emphasis added) (to be codified at Section 7931(e)(2)).

<sup>88</sup> Ordinarily, more than 100 of the 792 assignable NXX codes in an area code move to the new area code in a geographic split.

the public must be afforded the opportunity to discuss an overlay as one alternative method of relief.<sup>89</sup>

The Commission's policy has been employed as a means to prohibit discussions at public meetings of overlay area code alternatives. The Commission's policy has been employed to prevent industry members from proposing specific formal alternatives containing a pre-2001 overlay to the public, and it even has been used in some circumstances to prohibit all discussions of overlay area codes at public meetings. Even where such discussions are held, the existence of the ban chills meaningful discussion of the overlay alternative, as the ban causes members of the public to believe that an overlay is not a realistic option.

Prohibiting a free and open public discussion of a means to mitigate against the harm caused by introducing a new area code violates the statute, and cannot be permitted. It is particularly inappropriate, when the State is in a numbering crisis, and where customers have had to endure repeated area code changes and will bear more than 28 million telephone number changes in just a few years, to prohibit discussion of the one alternative that would allow customers to keep their telephone numbers. Thus, to comply with the requirements of Section 7930, the Commission should overturn the ban against overlay area codes.

## **II. THE COMMISSION SHOULD MODIFY D.96-12-086 TO ESTABLISH A PRESUMPTION IN FAVOR OF OVERLAYS IN CERTAIN CIRCUMSTANCES**

As shown above, geographic splits of area codes have proven to be woefully inadequate to meet the demand for NXX codes in most areas of this State. The longer implementation time, the cost to customers and the economy caused by repeated area code changes to existing telephone numbers, and the fact that geographic splits are not generally as efficient as overlays in allocating numbers to the areas where they are needed, all demonstrate the superiority of overlays as the method of area code relief in high density, high growth urban areas. Given the seriousness of the number shortages in this State today, overlay area codes are necessary to eliminate number shortages and rationing.

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<sup>89</sup> Overlay opponents suggest that overlays do not minimize disruption because they require mandatory 1+10-digit dialing for local calls. As is clear from our repeated filings, we believe that the CLECs are wrong, and overlays do minimize disruptions; however, this argument is irrelevant under the statute. The statute leaves it to the public, not the industry and not the Commission, to decide whether an overlay would minimize disruption. If members of the public believe that an overlay would minimize disruption, they are entitled to be heard on the issue, and are entitled to have the industry and the Commission consider the option.

As a result, the Commission should immediately adopt a policy in favor of area code overlays in three specific circumstances: (1) in NPAs that already have an overlay area code or mandatory 1+10-digit local dialing (thus, any future relief of the 310/424 NPA); (2) in NPAs where the previous round of relief was accomplished using a geographic split of the area code, and that geographic split failed to meet industry standards for the length of relief (5 years for the area that retained the "old" area code, 8-10 years for the area that received the "new" area code); and (3) in specific "high growth" NPAs in the major metropolitan areas of the State, where numbering resources are at a premium: the San Francisco Bay Area, including Silicon Valley (the 415, 650, 510, 925, and 408 NPAs); the Los Angeles Metropolitan area, including the San Fernando Valley (310/424, 562, 818, 213, and 323 NPAs); Anaheim/Orange County area (the current 714 NPA); and the San Diego metropolitan area (the 619, 858, and 935 NPAs).<sup>90</sup> The Commission's policy should establish a "rebuttable presumption" in favor of overlays, so that the public and members of the industry would be free to propose, discuss, and consider all potential options, and industry members would be free to propose alternate plans involving overlays and geographic splits, and present those plans to local jurisdictions and the public for their consideration.

These three presumptions are tailored to address situations where overlays would clearly be the best choice for relief. For example, where mandatory 1+10-digit dialing or an overlay area code already exist in an area, there should be no dispute that an overlay would make more sense and be less disruptive for customers than an area code split. If either area code in a geographic split fails to last long enough to meet industry standards for length of relief, that is a warning sign that demand is rapidly exceeding supply, and an overlay is needed to provide efficient and timely relief. The specific high growth urban NPAs specifically listed above are the most problematic high growth areas of the state, areas subject to an extremely high level of rationing for an extended period of time, where overlays can provide the needed numbering resources that geographic splits have not. While there are other areas and situations where overlays might be appropriate which the industry, the public, and the Commission, can address

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<sup>90</sup> To expedite relief for these area codes, the Commission should consider ordering mandatory 1+10-digit dialing immediately in the major metropolitan areas in the State facing extreme exhaust (the greater San Francisco Bay Area, greater Los Angeles, and Orange County), and begin customer education as soon as possible, using the 310/424 1+10-digit dialing customer education plan as a model. That way, when relief is necessary, overlay area codes can be implemented within six months of a Commission decision adopting a relief plan.



on a case-by-case basis. The three situations proposed here are only those situations where overlays should be the clear favorite for any relief project.

The presumptions we propose, if adopted by the Commission, will minimize future NXX code rationing. The more efficient use of numbering resources, the ability to avoid constant disputes over where to draw geographic split lines and which customers will be able to keep their area codes, and the quicker implementation period will make it easier for the industry and the Commission to adopt future area code relief plans, and will result in expedited relief and longer lives for new area codes. Particularly once the Commission and the industry has educated customers on mandatory 1+10-digit dialing, subsequent overlays can be introduced within six months of a Commission decision, further expediting area code relief.

To show how an overlay will eliminate rationing, compare what happened with the 415/650 geographic split versus what would have happened if the 650 would have been implemented as an overlay. The 415/650 areas are among the highest growth, most problematic areas in the State today for number planning. The 415 area code was one of the initial codes subject to the pre-lottery freeze on code assignments and was part of the first monthly NXX code lottery. The Commission adopted a geographic split of the 415 area code into the 415 and 650 area codes in August 1996 (D.96-08-042). By the time relief was completed (end of the mandatory dialing period) in May 1998, the "new" 415 area code was declared in jeopardy again and it stayed in lottery after the split. Four months later, the 650 area code was declared in jeopardy, and it entered the lottery in September, 1998. Both area codes are already in planning for further relief and will remain in a shortage condition at least until the area code relief plans are implemented. A timeline showing the key events in the geographic split is depicted on the top two-thirds of Attachment D.

If, however, the Commission had overlaid the 650 area code over the 415 area code, both the 415 and the 650 area codes would have ended rationing in August, 1997. Assuming the same timetable as that adopted for the 310/424 overlay, a one-year education program would have been held from August, 1996 (when D.96-08-042 was adopted) through August, 1997; mandatory 1+10-digit dialing would have been implemented in May, 1997, and the 650 overlay would have been fully implemented in August 1997 (9-10 months earlier than the geographic split was implemented). Rationing for both the 415 and the 650 would have ended that that time. Service providers and customers would have had full and equal access to

telephone numbers. And rationing not only would have ended in August 1997; no further rationing would ever be necessary in the 415/650 area again.

As of August, 1998, there were 627 NXXs available in both area codes.<sup>91</sup>

Assuming that a 415/650 overlay assigned to new entrants the full amount of NXX codes set aside in the 310/424 overlay for "first codes" (54) (certainly a high assumption), there would be 573 NXX codes available today in the combined 415/650 area. Subtracting out the pent-up demand for NXX codes in both the 415 and 650 areas after the August 1998 lottery (14),<sup>92</sup> leaves 559 NXX codes. Based on the revised 1998 COCUS for the combined 415 and 650 areas, carriers will demand 253 NXX codes this year in the area; assuming constant demand, the 415/650 overlay would have a remaining life of 2.2 more years before exhaust. A subsequent overlay could be implemented as quickly as six months after a Commission decision adopting a new overlay, leaving plenty of time to get another overlay in place.<sup>93</sup> A timeline showing the key events in the overlay scenario is depicted on the bottom portion of Attachment D.

This is only one example; using the same basic scenario, one can show that overlays would have successfully avoided rationing for other areas that have been in perpetual lottery. To end NXX code rationing in California once and for all, the Commission should adopt a policy favoring overlays in the three situations listed above.

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<sup>91</sup> See September 1, 1998 NANPA CO Code Administration 1998 Code Assignments Report.


<sup>92</sup> See NANPA Lottery Report No. 25.

<sup>93</sup> Moreover, subsequent relief would require only one NPA relief project, not two, and only one new NPA, not the two required for the separate 415 and 650 NPAs.

### CONCLUSION

For the foregoing reasons, the Commission should modify Decision 96-12-086 to  
(1) eliminate the ban on overlay area codes and (2) adopt a policy that creates a rebuttal  
presumption in favor of overlay area codes in the specific circumstances discussed herein.

Respectfully submitted,



John S. di Bene  
*Attorney for Pacific Bell*

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(415) 542-3154  
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Dated: October 15, 1998.

**DECLARATION OF ROSS IRELAND  
VICE PRESIDENT, NETWORK PLANNING & ENGINEERING, PACIFIC BELL**

I, Ross Ireland, in accordance with the provisions of the California Code of Civil Procedure § 2015.5, certify and declare as follows:

1. I am Vice President, Network Planning & Engineering, of Pacific Bell. I am responsible for all Pacific Bell network planning and engineering, including planning and acquiring available telephone number resources for the Pacific Bell network. I am making this declaration in support of Pacific Bell's Emergency Petition to Modify Decision 96-12-086.
2. Due to the chronic number shortages in this State since 1996, Pacific Bell has been unable to get the numbering resources that it needs to provide services for its customers and to meet current and future demand. The chronic number shortages in California have reached a crisis level, and relief is needed immediately.
3. I have reviewed Pacific Bell's Emergency Petition To Modify D.96-12-086, and the information contained therein is true and correct to the best of my information and belief. Virtually all of the information contained in the Emergency Petition is information routinely provided to the public by the California code administrator (formerly Pacific Bell's California-Nevada Code Administration (CNCA), and currently, the North American Numbering Plan Administrator (NANPA).
4. My staff has researched the shortage of telephone numbers in the other states, in discussions with NANPA and other state code administrators. In California, NXX codes in 73% of the state's area codes currently are in rationing in the Commission's monthly NXX code lottery. Throughout the rest of the nation, in comparison, only 15% of area codes are in any form of jeopardy/rationing. In September of this year, 822 NXX code requests were denied in California. In comparison, less than 200 NXX code requests are denied monthly in the rest of the nation.
5. All carriers in California are effected by the lottery, Pacific Bell, because of the way the lottery is structured, is penalized severely. The lottery calls for 60% of all the new NXX codes available to be assigned to new carriers in a rate center, leaving only 40% of the available NXX codes to carriers like Pacific Bell who attempt, without much success, to fill the majority of their requests through the later, the growth pool. This has led to Pacific Bell being substantially harmed by its inability to get the telephone numbers that it needs to provide service to its customers.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
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Ross Ireland  
Vice President, Network Planning & Engineering, Pacific Bell

Dated: October 14, 1998

**DECLARATION OF BILL F. POWERS  
SALES VICE PRESIDENT, PRIORITY MARKETS, PACIFIC BELL**

I, Bill F. Powers, in accordance with the provisions of the California Code of Civil Procedure § 2015.5, certify and declare as follows:

1. I am Sales Vice President, Priority Markets, of Pacific Bell. In that capacity, I am responsible for managing Pacific Bell's marketing of services to its largest business customers. I am making this declaration in support of Pacific Bell's Emergency Petition to Modify Decision 96-12-086, in which Pacific Bell seeks elimination of the Commission's ban against overlay area codes.

**Telephone Number Shortages Are Harming Pacific Bell Business Customers**

2. Most, if not all, of business expansion and growth takes place in the major metropolitan areas of California, where the need for telephone numbers has become so critical that the CPUC has ordered a lottery process for NXX code assignment to carriers requesting telephone numbers. At any given time, the more than 170 CPCN certified carriers in California could be competing for NXX codes through this lottery process. The lottery system harms Pacific Bell and the customers it serves.

3. Following the process, in nearly all cases, Pacific Bell must attempt to satisfy its customer demands by submitting for NXX codes from the growth pool, which contains only two-fifths or 40% of the NXX codes made available to carriers through the lottery. This process has produced unsatisfactory results for Pacific Bell in obtaining the necessary number of NXX codes it requires to meet customer needs and has often times led to serious delays for business customers.

4. As an example of this problem, in the August 1998 lottery, Pacific Bell requested 87 growth NXX codes and received only 8 codes, or 9% of its request.<sup>1</sup> The vast majority of the Pacific Bell requests, needed to provide specific services to current customers, are being deferred from month to month.

5. In the Bay Area, a total of 231 Pacific Bell customer requests for telephone numbers were denied from November 1997, to June 1998. These Bay Area customers requested 172,635 total telephone numbers, but Pacific Bell was only able to provide 35,835 telephone numbers to them. Four-fifths (80%) of the Pacific Bell customer requests for a total of 136,800 telephone numbers

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<sup>1</sup> Unofficial September 1998 lottery data shows Pacific requesting 91 growth codes and receiving only 13 codes.

were denied. In July 1998 alone, customer requests for 28,490 telephone numbers were denied.

6. Each month Pacific Bell customer service personnel must say to their customers, "we do not know if we can give you the numbers you need and we may not know from month to month when we can grant your requests."

7. The lottery process specifically harms Pacific Bell customers and precludes Pacific Bell from adequately serving its customers due to its limited access to new NXX codes. Pacific Bell customers must defer expansion or corporate moves, continue to make do with severely taxed current telecommunications systems, and cannot even plan when improvements or changes can take place. These customers are placed at a disadvantage in their industries when they must compete with businesses in other states or countries, where there is little or no NXX shortage. Some Pacific Bell customers, such as hospitals or schools find themselves in particularly perilous situations, all as a result of lack of telephone numbers.

#### **The Lottery Process Exacerbates the Current Number Shortage in California**

8. The lottery process has become an ineffective way to deal with California's growing number crisis. Since the process began in October of 1996, requests for telephone numbers has continued to increase, due to a vigorous California economy and strong competitive growth. While the pent up demand for new NXX codes numbers goes unmet, new demands continue to increase. This is causing a snow ball effect for the lottery process and Pacific Bell. Month after month Pacific Bell must re-submit denied NXX code requests from the past months, along with new requests for the current month. Often times resulting in customer requests taking months and months to satisfy, or possibly never being filled.

9. For an example, in January 1997, Pacific requested 6 growth NNX codes, 0 were granted, leaving 6 requests unfilled. In February 1997, Pacific requested 14 growth NNX codes, 6 still unfilled requests from January, along with 8 new requests, Pacific was granted 3 growth NNX codes, leaving a total of 11 unfilled requests, at least three of which were carried over from January. This situation has continued to snowball through 1997 and into 1998, where in August 1998 Pacific Bell requested 87 growth codes and received only 8 NNX codes. This pent up demand, coupled with the increase in demand for new telephone numbers, has resulted in California business customers being put off, sometimes indefinitely, waiting for phone numbers and Pacific Bell being left at unfair disadvantage in an ever increasing competitive marketplace.

**Current Numbering Policies Seriously Impact California Businesses**

10. There are numerous examples of how number shortages and rationing harm our customers; below are a few recent examples.

11. In late 1997, a hospital in Los Angeles requested from Pacific Bell a complete NXX code(10,000). The hospital was enlarging its administrative and medical workspace and a minimum of 4,000-5,000 new numbers were needed, with additional numbers available for growth. The hospital officials cited severe numbering problems, one department of 14 dietitians sharing one telephone number; physicians sharing telephone numbers and other numbering shortages impairing the ability of the hospital staff to efficiently do their work. Pacific Bell requested a new code from the code administrator. However, it took three requests, one each month, before the request was complete. During that three month period, the hospital could not complete its renovation plans, set specific timelines or request vendor bids, until information was provided to them that the code administrator could grant their NXX code request.

12. An engineering firm in Irvine is in the process of moving their headquarters to Aliso Viejo, California, to be served out of the Laguna Niguel office. The firm requested approximately 6,000 telephone numbers from Pacific. Pacific will be unable to fill their request until at least February or March of 1999 due to the lack of available numbers as a result of the 949 permissive dialing period that is scheduled to end in first quarter 1999. This delay has prevented the firm from being able to give the amount of advance notice to vendors, customers, and plan their relocation as they had hoped.

13. A major accounting concern built a new regional facility in Mountain View to consolidate of four local offices. Their plan included provisioning space and services for 1,200 employees in the new facility. They requested 2,500 telephone numbers; however, due to number conservation issues, caused by 650 area code being in jeopardy status, Pacific was only able to offer the company 100 telephone numbers initially. It was not until after 650 came out of jeopardy status, several months later, that Pacific was finally able to fulfill their request. Of course, the 650 is now back in lottery, only a few months after it exited it lottery.


14. We have been informed by our customers that our competitors have been using their spare telephone numbers as a selling point, telling our customers that they can provide our customers with the telephone numbers needed to expand their businesses. While the Commission's intent to spur on competition is evident in the number of competitors in the California marketplace, it would seem, that intent should not include forcing customers to change

**ATTACHMENT B**

carriers, against the customers' will, so that desperately needed telephone numbers can be obtained.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Oct 9 - 1998  
October \_\_, 1998

  
\_\_\_\_\_  
Bill F. Powers  
Sales Vice President, Priority Markets, Pacific Bell



**PROPOSED WORDING CHANGES TO DECISION 96-12-086**

(additions in double underline, deletions in strikeout)

**Page 2, the first full paragraph should be modified to read:**

We shall adopt a policy in today's decision which calls for the continued exclusive use of geographic splits for establishing new area codes scheduled to be implemented through the year 2000, as set forth in the Table on page 23 of this decision with the possible exception of the 310 area code, assuming competitive neutrality can be achieved. Phrases regarding area codes implemented "through the year 2000," or the "next phase of relief," or the like, when used in this decision shall mean establishing those new area codes set forth in the Table on page 23 of this decision.

**Ordering Paragraph 1 of D.96-12-086 should be modified to read:**

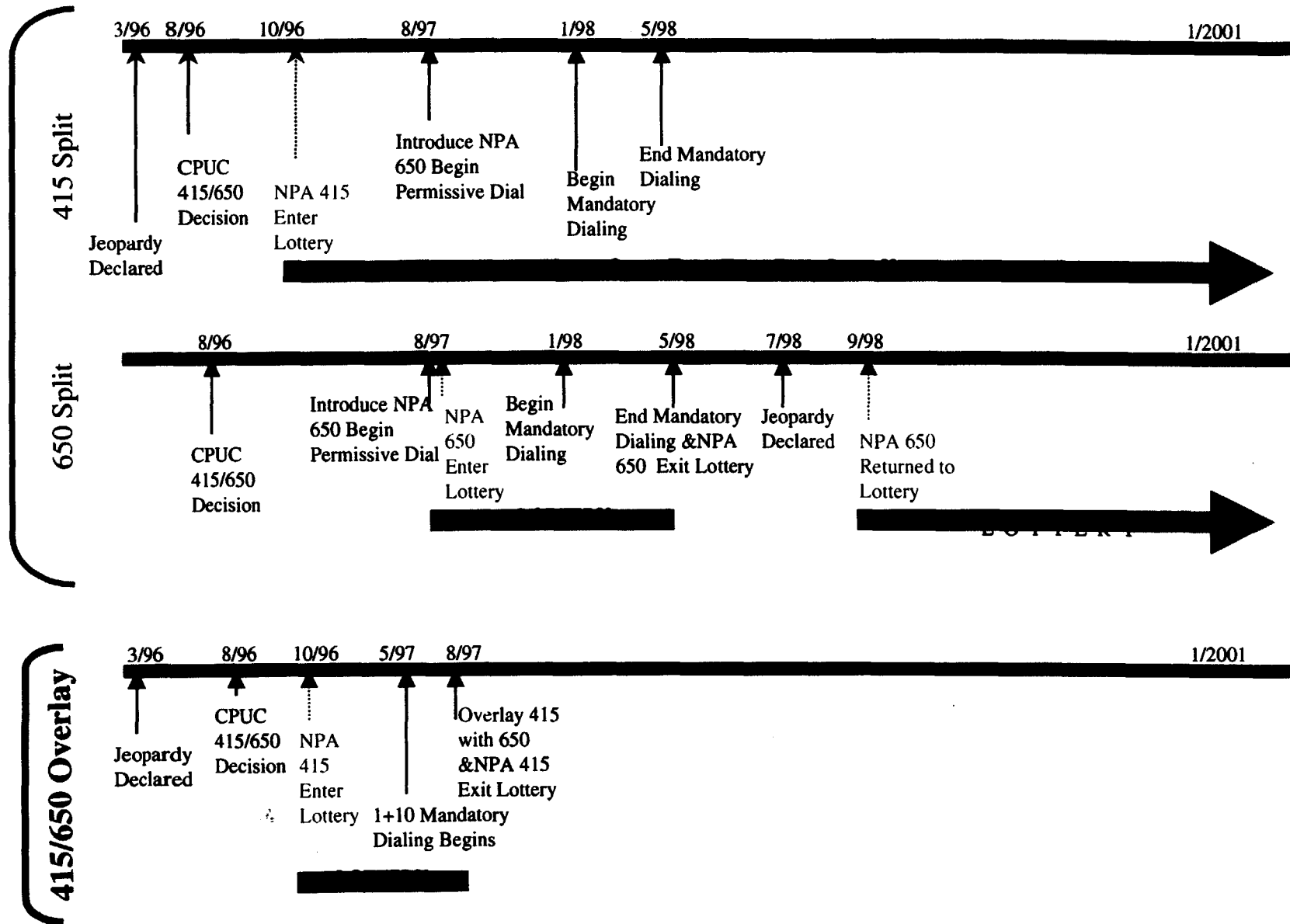
1. The Commission's statewide policy for area code relief planning shall direct that geographic splits be used for all new area codes ~~scheduled to become operative through the end of the calendar year 2000~~ as set forth in the Table on page 23 of this decision with the possible exception of the next 310 NPA relief plan.

**A New Ordering Paragraph (Ordering Paragraph No. 6) should be added, to read:**

6. For new area codes established after the area codes listed on page 23 of this decision, there shall be a rebuttable presumption in favor of using an overlay area code as the method of relief where any of the following exist:

- (a) the new area code will be established in an area that already has an overlay area code, or in an area that already has mandatory 1+10-digit dialing;
- (b) the new area code will be established in an area where the last area code established in the area failed to satisfy the standards for length of relief established in the Section 5 of the Industry Numbering Committee's NPA Code Relief Planning and Notification Guidelines, including the recommended 8-10 year length of relief for customers who have changed their telephone numbers; or,
- (c) the new area code will be established in an area where any of the following area codes currently exist: 415, 650, 510, 925, 408, 310/424, 562, 818, 213, 323, 714, 619, 858, or 935.

# Overlays Vs. Splits: The 415/650 Comparison



**CERTIFICATE OF SERVICE**

I, Lila Tam, certify that the following is true and correct:

I am a citizen of the United States, State of California, am over eighteen years of age, and am not a party to the within cause.

My business address is 140 New Montgomery Street, San Francisco, California 94105.

On October 15, 1998, I served "PACIFIC BELL'S EMERGENCY PETITION TO MODIFY DECISION 96-12-086" in R.95-04-043 and I.95-04-044 by placing true copies thereof in envelopes addressed to the parties in the attached list, which envelopes, with postage thereon fully prepaid, I then sealed and deposited in a mailbox regularly maintained by the United States Government in the City and County of San Francisco, State of California.

Executed this 15th day of October, 1998, at San Francisco, California.

PACIFIC BELL  
140 New Montgomery Street, Room 2501  
San Francisco, CA 94105



By: \_\_\_\_\_  
Lila Tam